

History of the Missouri
Electric Utility Fuel Adjustment Clause

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Disclaimer

The purpose of this whitepaper is to provide an overview of the of the history of the fuel adjustment clause ("FAC") for investor-owned electric utilities in Missouri just prior to and since Section 386.266 RSMo. became effective on January 1, 2006. The author is not an attorney but was involved with the application of this section of Missouri statute from the date the Governor signed the bill and has remained active in all cases before the Commission regarding the electric utilities since that time first as an employee at on the Missouri Public Service Commission Staff and then as a Senior Analyst for the Missouri Office of the Public Counsel. While care was taken to be impartial in the writing of this paper, any views that may have been inadvertently expressed are the views of the author and not necessarily that of the Missouri Office of the Public Counsel.

All the cases mentioned in this paper can be found in the Commission's electronic filing system EFIS. <https://www.efis.psc.mo.gov/>

History of Missouri's Electric Utility Fuel Adjustment Clause

Introduction

The purpose of this whitepaper is to provide a general description of the history of electric utility fuel adjustment clauses ("FACs") in Missouri prior to and after the passage of Section 386.266 Revised Missouri Statutes ("RSMo.") in 2005.¹ This whitepaper is intended to provide a basic understanding of the history of investor-owned electric utility FACs in a neutral and unbiased manner.

Recovery of Fuel and Purchased Power Costs Prior to Section 386.266 RSMo

In the 1979 Missouri Supreme Court opinion of *Utility Consumer Council of Missouri, Inc. v. P.S.C.*,² the Court concluded FAC surcharges were unlawful because these charges allowed rates to be charged to retail customers without consideration of all relevant factors. The Court warned "to permit such a clause would lead to the erosion of the statutorily-mandated fixed rate system."³ In its opinion, the Court further explained, "If the legislature wishes to approve automatic adjustment clauses, it can of course do so by amendment of the statutes and set up appropriate statutory checks, safeguards, and mechanisms for public participation."⁴

After this Supreme Court opinion was issued, fuel and purchased power costs for Missouri investor-owned electric utilities were normalized and annualized in general rate proceedings. These expenses were included in the determination of the utility's revenue requirement that new rates were set to recover. Having a set amount in the revenue requirement provided an incentive to the electric utility to minimize its fuel and purchased power expenses since all savings from fuel and purchased power activities incurred to reliably serve its customers, would be retained by the electric utility thereby increasing its rate of return. Likewise, the electric utility absorbed all costs above what was included in the revenue requirement decreasing its rate of return. Taking into account the totality all of its costs, not just the fuel and purchased power costs, the utility would make a determination when it would ask for another rate increase.

¹ Section 386.266 RSMo. was Truly Agreed To and Finally Passed by the Missouri House of Representatives and Senate on April 27, 2005. Governor Matt Blunt signed this legislation on July 14, 2005. This Section was subsequently modified in 2018 and 2022. These modifications have not changed the portions of § 386.266 RSMo. that pertain to the FAC.

² State ex rel. Utility Consumers Council, Inc. v. P.S.C., 585 S.W.2d 41(MO. 1979).

³ Id. at 57.

⁴ Id.

This incentive worked well for the Missouri electric utilities and their customers for the next twenty-five years. In the 1970's through 1980's the two largest Missouri investor-owned electric utilities, Union Electric Company ("Union Electric") and Kansas City Power & Light Company ("KCPL") built large coal plants. Each also added a nuclear unit to their generation fleet.⁵

These two large electric utilities did not ask for an increase in rates for a period of about twenty years. This was not because their fuel costs and purchased power costs were over-estimated, but because their total costs were less than the revenue collected from their retail customers. This was due to a variety of factors; most notably the inclusion of depreciation expense and a return on their coal and nuclear facilities.

The fuel costs for these plants were relatively stable. They entered into long term (10- to 20-years) contracts with coal and uranium suppliers. While the fuel costs were not volatile for these utilities, the high capital costs of these plants, and a return on these expenditures, were included in the customers' rates of these electric utilities.

The anticipated energy demand for energy that these coal and nuclear plants were built to meet did not materialize. This left Union Electric and KCPL with large amounts of excess generation. There were no centralized markets through which Union Electric and KCPL could sell excess energy and capacity. Excess generation and capacity from these utilities and other regional providers were sold through long-term contracts⁶ on a cost-plus basis to the smaller investor-owned electric utilities in the state thus negating the need for smaller electric utilities to build generation resources to meet their customers' electricity requirements. This mitigated rate increase requests for these smaller investor-owned electric utilities since they did not add capital costs to their revenue requirements. It also provided revenues to the utilities with excess generation to offset some of the capital costs of the excess generation.

Eventually the large utilities' customers load requirements grew and the large utilities needed the generation they had built in the 1970's and 1980's to meet their own customers' needs. With excess generation no longer available to meet their customers' needs, the smaller electric utilities began to build the least-cost generation option at that time – natural-gas fired combustion turbines and combined cycle plants. While these plants were less expensive to build than coal or nuclear plants, the natural gas fuel costs were uncertain and, in the late 1990's and early 2000's, very volatile.

⁵ UE built and owned 100% of the Callaway Nuclear Plant near Reform, Missouri. KCPL was a 47% owner of Wolf Creek Nuclear Plant near Burlington, Kansas.

⁶ 20 to 40 years.

After two months of extraordinarily cold weather and continued reports of extreme storage withdrawals at the end of the year 2000, the commodity price of natural gas spiked to nearly \$10 per thousand cubic feet (“Mcf”) after remaining consistently between \$1/Mcf to \$3/Mcf since the inception of the unregulated wholesale natural gas markets in the 1980s.⁷ These fluctuating natural gas prices had little impact on the total fuel costs of KCPL and Union Electric since most of their customers’ needs were met through their nuclear and coal generation. However, the fluctuating natural gas prices significantly impacted the smaller electric utilities’ fuel costs between rate cases and increased their risk of not recovering through rates a return on their investments. These small utilities turned to the Missouri Legislature to provide for the assurance of the recovery of the fluctuating fuel costs through a rate adjustment mechanism that would allow them to charge interim rates to recover fuel and purchased power costs without a full rate case. The provisions of Section 386.266 RSMo, also known as Senate Bill 179 (“SB 179”), took effect on January 1, 2006.⁸

Overview of Section 386.266 RSMo

This Section gives the Missouri Public Service Commission (“Commission”), among other things, the authority to approve rate schedules authorizing periodic interim rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs, including transportation costs. A FAC is a rate adjustment mechanism allowed under this section. The statute, in addition to requiring approval from the Commission before implementing a FAC, includes other provisions including consumer protections. It requires the Commission to approve, modify, or reject FACs only as a part of a general rate case proceeding in which all costs and relevant factors are considered. (§ 386.266.5 RSMo.) Realizing that the interim mechanism would remove the incentive for the utility to work to keep minimize fuel and purchased power costs, the statute allows the Commission to include features designed to provide incentives to improve the efficiency and cost-effectiveness of the electric utility’s fuel and purchased-power procurement activities. (§ 386.266.1 RSMo.) To guard against long-term over-earnings by an electric utility with a FAC, the section requires that if the Commission approves a FAC for an electric utility, the electric utility must file a general rate case so that all rates are reviewed and reset no later than four years after the effective date of the tariff sheets that implement the FAC. (§ 386.266.5(3) RSMo.) Prudence reviews of the costs included in an FAC are to be conducted at least every eighteen months (§ 386.266.5(3) RSMo.) and true-ups to adjust for over- and under-recoveries are required at least

⁷ Missouri Public Service Commission Case No. GW-2001-398, EFIS case GW201398xxx, Item no. 44, Final Report of the Missouri Public Service Commission’s Natural Gas Commodity Price Task Force, August 29, 2001.

⁸ § 386.266.13 RSMo.

annually. (§ 386.266.5(2) RSMo.) Amounts charged/refunded to the customers through an FAC are required to be separately disclosed on each customer's bill. (§ 386.266.7 RSMo.)

At the time § 386.266. RSMo. became effective, there were four investor-owned electric utilities in Missouri – Union Electric, KCPL, Aquila, Inc. (“Aquila”),⁹ and the Empire District Electric Company (“Empire”). Union Electric subsequently did business as AmerenUE and then Ameren Missouri. Aquila subsequently did business as KCP&L – Greater Missouri Operations Company (“GMO”) and is now doing business as Evergy Missouri West (“Evergy West”). KCPL is now doing business as Evergy Missouri Metro (“Evergy Metro”). Empire is now doing business as Liberty.

Development of Commission Rules Regarding FACs

Section 386.266.10 RSMo. gives the Commission the authority to promulgate rules to govern the structure, content, and operation of FACs. That subsection also gives the Commission the authority to promulgate rules regarding the procedures for the submission, frequency, examination, hearing, and approval of FACs. Section 386.266.13 requires Commission rules for the application process for a FAC to be in effect prior to the Commission issuing an order for a FAC.

Soon after § 386.266 RSMo went into effect, the Staff of the Public Service Commission (“Staff”) began the work of developing rules governing the implementation of this section. Initially there were two rules: one rule provided the filing and information requirements necessary for requesting approval, continuation, modification, and discontinuation of an FAC along with filing and submission requirements for changes to the FAC rates and true-ups. This rule also provided the contents of quarterly surveillance reports and monthly reporting requirements for electric utilities that are granted a FAC. A second rule provided the structure and governance requirements for an FAC.

In its development of these initial draft rules, Staff worked diligently with a broad group of stakeholders - including representatives from electric utilities, large customers, AARP, and the Office of the Public Counsel (“OPC”). Auditors, engineers, economists, and attorneys worked together in over fifteen workshops collaborating to develop specific language to propose rules to the Commission to implement the provisions of § 386.266 RSMo. pertaining to FACs.

The Commission opened Case No. EX-2006-0472 on June 15, 2006, with a *Notice of Finding of Necessity* for rules to establish and implement a FAC and began the formal rulemaking process with the proposed rules developed through the collaborative workshop process. The rules it

⁹ Aquila had two operating divisions – Aquila Networks - MPS and Aquila Networks - L&P.

proposed were the draft rules developed in the collaborative workshop process. Public hearings regarding the proposed FAC rules were held in Kansas City, St. Louis, Overland, Cape Girardeau, Jefferson City and Joplin in late August 2006 and early September 2006. Written comments were received from seven individuals and fourteen groups or companies. The Commission issued its final orders of rulemaking in Case No. EX-2006-0472 on September 21, 2006.¹⁰ The final orders were published in the December 1, 2006, *Missouri Register* effective January 30, 2007.¹¹

In November 2010, the Commission opened a working docket, file no. EW-2011-0139, *In The Matter Of A Repository File Concerning Staff's Review Of The Commission's Fuel Adjustment Clause Rules* to assist in reviewing its FAC rules. Comments from interested parties were filed in this case in early 2011. Three workshops were held in the spring and summer of 2015 regarding these rules. The Commission closed that file almost 4½ years later and opened a formal rulemaking case, EX-2016-0294, in November 2016 with a final order of rulemaking for a single rule, 4 CSR 240-20.090 *Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms*, which combined the previous two rules. The Commission's *Final Order of Rulemaking* was published in the *Missouri Register* on October 4, 2018. A revised rule, 20 CSR 4240-20.090 *Fuel and Purchased Power Rate Adjustment Mechanism*,¹² which included minimum filing requirements, became effective January 30, 2019. The FAC minimum filing requirement rule 4 CSR 240-3.161 was also rescinded on that date.

History of Requests for FACs

Empire, now Liberty, was the first electric utility to request cost recovery of fuel costs under § 386.266 RSMo. when it filed Case No. ER-2006-0315 on February 1, 2006. This case was filed while the Commission rules were still being drafted. In this case, Empire did not request an FAC. Instead, it requested what it titled an Energy Cost Rider ("ECR") to recover costs between rate cases. Due to a *Stipulation and Agreement* Empire had entered into in its previous rate case,¹³ the Commission required Empire to remove from its pleadings and other filings its

¹⁰ Missouri Public Service Commission, Case No. EX-2006-0472, EFIS items 27 and 28

¹¹ <http://s1.sos.mo.gov/CMSImages/adrules/moreg/previous/2006/v31n23/v31n23b.pdf>

¹² As part of the transfer of the Commission from the Department of Economic Development to the Department of Commerce and Insurance in 2019, all the Commission's regulations were transferred from Economic Development's Title 4 to Commerce and Insurance's Title 20 resulting in a change from 4 CSR 240 to 20 CSR 4240.

¹³ Case No. ER-2004-0570, *In the Matter of the Tariff Filings of The Empire District Electric Company to Implement General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area*.

request and support for an ECR.¹⁴ The Commission's original FAC rules were finalized and effective prior to when Empire filed its next rate case, Case No. ER-2008-0093 on October 1, 2007. In its July 30, 2008, *Report and Order* in that case, the Commission granted Empire a FAC. The Commission has authorized continuation of a FAC with modifications in all general rate cases subsequently filed by Empire.

On July 3, 2006, two of Missouri's investor-owned electric utilities filed general rate increase cases in requesting a FAC. Union Electric, then doing business as AmerenUE, requested the Commission grant it a FAC in Case No. ER-2007-0002 and Aquila requested a FAC in Case No. ER-2007-0004. While the FAC rules were not final at the time these utilities filed these general rate increase cases, the Commission had, just eighteen days earlier, sent its proposed rules to the Missouri Office of the Secretary of State for publication in the Missouri Register. The Commission's determination of the final FAC rules occurred while these rate cases were pending.

In the AmerenUE case, ER-2007-0002, the Commission concluded in its May 22, 2007, *Report and Order*:

After carefully considering the evidence and arguments of the parties, and balancing the interests of ratepayers and shareholders, the Commission concludes that AmerenUE's fuel and purchased power costs are not volatile enough [to] justify the implementation of a fuel adjustment clause at this time.¹⁵

AmerenUE filed another general rate increase case, ER-2008-0318, on April 4, 2008, again seeking the Commission's approval of a FAC. In its January 27, 2009, *Report and Order*¹⁶ in this case, the Commission authorized AmerenUE to implement an FAC. The Commission has authorized continuation of a FAC with modifications in all general rate cases subsequently filed by AmerenUE, now doing business as Ameren Missouri.

The Commission authorized the first FAC for a Missouri investor-owned electric utility under § 386.266 RSMo. in its May 17, 2007, *Report and Order* in Aquila's general rate proceeding, case no. ER-2007-0004. FAC base rates were approved for each of Aquila's two rate districts, then designated as Aquila Networks-MPS and Aquila Networks-L&P. The actual effective date of Aquila's FACs were delayed when the Commission found that the proposed FAC tariff sheets filed by Aquila were not consistent with its *Report and Order*. Tariff sheets implementing a FAC consistent with the Commission's *Report and Order* were approved on June 29, 2007, effective

¹⁴ Case No. ER-2006-0315, EFIS item 57, *Order Clarifying Continued Applicability of the Interim Energy Charge*, pg. 3, effective May 12, 2006.

¹⁵ Pg. 26.

¹⁶ Case No. ER-2008-0318, EFIS item no. 589, pg. 70.

July 5, 2007. Following this rate case, Great Plains Energy acquired Aquila and renamed it GMO. The Commission has authorized the continuation of a FAC with modifications in all general rate cases subsequently filed by GMO, now known as Evergy West. When GMO combined the rates of Aquila Networks-MPS and Aquila Networks-L&P in case no. ER-2016-0156, a single FAC rate was then applicable to all of GMO's customers regardless of which network previously served the customer.

KCPL, now Evergy Metro, was the last Missouri electric utility to be granted an FAC. At the time that SB 179 was being debated at the Missouri Legislature, KCPL was negotiating a regulatory plan that would address financial considerations of KCPL's investment in the Iatan 2 Power Plant and other investments, and the timeliness of the recovery of the costs of these investments. As a part of the *Stipulation and Agreement*¹⁷ in that case, KCPL agreed, among other items, that prior to June 1, 2015, it would not seek to utilize any mechanism authorized in SB 179. Therefore, KCPL did not request a FAC until its general rate case ER-2014-0370 filed on October 30, 2014. The Commission granted KCPL a FAC in its September 2, 2015, *Report and Order*.¹⁸ Tariff sheets implementing an FAC for KCPL became effective September 29, 2015. The Commission has authorized the continuation of an FAC with modifications in all general rate cases subsequently filed by KCPL.

Incentive Mechanism

AmerenUE and Aquila rate cases first rate cases requesting a FAC, they assured the Commission that no incentive for cost-effective and efficient fuel and purchased power procurement was necessary. Other parties to these cases did not agree. The Commission found, in its order in the Aquila case, ER-2007-0004:

The Commission also finds after-the-fact prudence reviews alone are insufficient to assure Aquila will continue to take reasonable steps to keep its fuel and purchased power costs down, and the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to not allow a 100% pass through of those costs.¹⁹

In that case, two different intervenors proposed an incentive mechanism of only flowing 50% of the difference between FAC costs included in the rates and what was actually incurred. In that case, the Commission concluded that this would expose Aquila to risks that would be a violation

¹⁷ Case No. EO-2005-0329, EFIS item no. 1, pg. 7.

¹⁸ Case No. ER-2014-0370, EFIS item no. 592, page 30.

¹⁹ Case No. ER-2007-0004, *Report and Order*, pg. 54.

of § 386.266.4(1).²⁰ In that case, the Commission chose instead to allow a 95% pass-through of that cost difference.²¹ No party to the case had proposed this as an incentive mechanism. However, the Commission concluded that this sharing mechanism would provide a “significant” incentive to Aquila while still giving Aquila an opportunity to earn a fair return on its investment.

In the Empire rate case, ER-2008-0093, it was Empire’s belief that no incentive was necessary.²² However it proposed that the Commission use the same incentive mechanism that it had ordered for Aquila.²³ Other parties proposed different percentage sharing mechanisms, and the large consumer group proposed a mechanism with bands for different levels of incentive. The Commission chose the same mechanism for Empire’s FAC as it ordered for Aquila.²⁴

In its rate case no. ER-2008-0318, AmerenUE proposed the Commission adopt the 95% mechanism it had ordered for Aquila and Liberty.²⁵ Other parties to the case proposed different sharing percentages. The Commission again ordered the 95% sharing mechanism.²⁶ In the KCPL case, ER-2014-0370, KCPL argued, like Aquila and Empire that no sharing mechanism was necessary.²⁷ The Commission once again found that a prudence review was not enough incentive and ordered the 95% sharing mechanism for KCPL.²⁸

Since these initial cases, Staff and OPC have filed testimony requesting changes to the FAC sharing mechanism in almost every general rate case. The Commission has acknowledged that it could change the incentive mechanism but has not changed from the 95% pass through of costs and 95% return of savings of the difference between the costs in the permanent rates and the actual incurred costs.

Prudence Reviews

Section 386.266.5(4) requires prudence reviews of the costs in the FAC to occur at least every eighteen (18) months. Since the first FAC under § 386.266 RSMo. was approved for GMO, the

²⁰ Now § 386.266.5(1).

²¹ Case No. ER-2007-0004, *Report and Order*, pg. 55.

²² Case No. ER-2008-0093, *Report and Order*, pg. 44.

²³ *Id.*, pg. 41.

²⁴ *Id.*, pg. 47.

²⁵ Case No. ER-2008-0318, *Report and Order*, pg. 70.

²⁶ *Id.*, pg. 76.

²⁷ Case No. ER-2014-0370, *Report and Order*, pg. 30.

²⁸ *Id.*, pg. 31.

first prudence audit conducted was on GMO's FAC, followed by prudence audits on Empire's, AmerenUE's, and KCPL's FACs.²⁹

In Ameren Missouri's³⁰ first prudence audit case, EO-2010-0255, the Commission determined that Ameren Missouri "acted imprudently, improperly and unlawfully when it excluded revenues" derived from power sales agreements from its FAC.³¹ On May 26, 2011, the Commission ordered Ameren Missouri refund \$17,169,838 to its ratepayers with interest. Because these power sales agreements crossed over two prudence review time periods, the Commission, in Ameren Missouri's second prudence audit, EO-2012-0074, made the same finding ordering Ameren Missouri to refund to its customers \$26,342,791 plus interest.³² This order was effective August 30, 2013 – over two years after the original finding of imprudence in the previous prudence case.

Table 1 below provides a snapshot of the prudence cases before the Commission in which imprudence was alleged and the result of the prudence review.

Table 1
FAC Prudence Cases Where Imprudence Was Alleged

Case	Utility	Alleged Area of Imprudence	Party Alleging Imprudence	Find of Imprudence?
EO-2010-0255	Ameren Missouri	Power sales revenue exclusion	Staff	Yes, refund \$17,169,838
EO-2012-0074	Ameren Missouri	Power sales revenue exclusion	Staff	Yes, refund \$26,342,791
EO-2011-0390	GMO	Hedging practices	Staff	No
EO-2017-0065	Empire	Hedging practices	OPC	No
EO-2019-0067	GMO	Allocation of Steam costs, wind purchased power agreement costs	OPC	No
EO-2019-0068	KCPL	REC retirements, wind purchased power agreement costs	OPC	No
EO-2020-0262	Evergy Metro	Not utilizing demand-side curtailment programs	OPC	Yes, refund \$152,165
EO-2020-0263	Evergy West	Not utilizing demand-side curtailment programs	OPC	Yes, refund \$160,892

²⁹ Case Nos. EO-2009-0115, EO-2010-0084 and EO-2010-0255 for GMO, Empire, and Ameren Missouri respectively.

³⁰ At the time of the first FAC prudence review, AmerenUE was doing business as Ameren Missouri.

³¹ Case No. EO-2010-0255, *Report and Order*, page 2.

³² Case No. EO-2012-0074, *Report and Order*, page 2.

At the writing of this whitepaper, Staff has conducted 32 prudence audits. Staff has not identified any areas of imprudence in any of its audits since 2011. The Missouri Office of the Public Counsel (“OPC”) has alleged imprudence in five cases alleging a total of seven imprudent actions with two findings of imprudence.

Conclusion

The FAC process and structure has evolved over time. It is a dynamic mechanism that should change as the industry changes but stay true to the statutory requirements. This paper is a snapshot at the time it was written. History will continue to be written as time passes.

There is a companion FAC whitepaper titled *Description of the Missouri Electric Utility Fuel Adjustment Clause* that provides the specifics of the FAC mechanism and how it works in Missouri.

Description of the
Missouri Electric Utility Fuel Adjustment Clause

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December 2024

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The purpose of this whitepaper is to provide an overview of the of how the fuel adjustment clause (“FAC”) for investor-owned electric utilities in Missouri operates. The author is not an attorney but was involved with the application of this section of Missouri statute from the date the Governor signed the bill and has remained active in all cases before the Missouri Public Service Commission (“Commission”) regarding the electric utilities since that time, first as an employee at on the Commission Staff, and then as a Senior Analyst for the Missouri Office of the Public Counsel. While care was taken to be impartial in the writing of this paper, any views that may have been inadvertently expressed are the views of the author and not necessarily that of the Missouri Office of the Public Counsel.

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Description of the Missouri Electric Utility Fuel Adjustment Clause

Introduction

The purpose of this whitepaper is to provide a description and understanding of the functionality of the fuel adjustment clauses (“FACs”) of the investor-owned electric utilities of Missouri. This whitepaper is not an exhaustive description of each Missouri electric utility’s FAC but is intended to provide a basic understanding of the application of Section 386.266 RSMo. through FACs in a neutral and unbiased manner.

Overview of Section 386.266 RSMo

The provisions of Section 386.266 RSMo, also known as Senate Bill 179, took effect on January 1, 2006.¹ This section of the Missouri Statutes gives the Missouri Public Service Commission (“Commission”), among other things, the authority to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings that reflect increases and decreases in its prudently incurred fuel and purchased power costs, including transportation costs. A FAC is an interim rate adjustment mechanism allowed under this section.

The statute, in addition to requiring approval from the Commission before implementation, includes certain other provisions, including consumer protections. One such provision is that it requires the Commission to approve, modify, or reject FACs only as a part of a general rate case proceeding in which all costs and relevant factors are considered. (§ 386.266.5 RSMo.) Realizing that the interim mechanism would remove the incentive for the utility to work to minimize fuel and purchased power costs, the statute allows the Commission to include features designed to provide incentives to improve the efficiency and cost-effectiveness of the electric utility’s fuel and purchased-power procurement activities. (§ 386.266.1 RSMo.) To guard against long-term over-earnings by an electric utility with a FAC, the section requires that, if the Commission approves a FAC for an electric utility, the electric utility file a general rate case so that all rates are reviewed and reset no later than four years after the effective date of the tariff sheets that implement the FAC. (§ 386.266.5(3) RSMo.) Prudence reviews of the costs included in an FAC are to be conducted by the Commission Staff at least every eighteen months (§ 386.266.5(3) RSMo.) and true-ups to adjust for over- and under-recoveries are required at least annually. (§ 386.266.5(2) RSMo.) Amounts charged/refunded to the

¹ Section 386.266 RSMo. was subsequently modified in 2018 and 2022. These modifications have not changed the portions of § 386.266 RSMo. that pertain to the FAC.

customers through an FAC are required to be separately disclosed on each customer's bill. (§ 386.266.7 RSMo.)

At the time § 386.266. RSMo. became effective, there were four investor-owned electric utilities in Missouri – Union Electric, Kansas City Power and Light Company ("KCPL"), Aquila, Inc. ("Aquila"), and the Empire District Electric Company ("Empire"). Union Electric subsequently did business as AmerenUE and then Ameren Missouri. Aquila subsequently did business as KCP&L – Greater Missouri Operations Company ("GMO") and is now doing business as Evergy Missouri West ("Evergy West"). KCPL is now doing business as Evergy Missouri Metro ("Evergy Metro"). Empire is now doing business as Liberty.

Development of Commission Rules Regarding FACs

Section 386.266.10 RSMo. gives the Commission the authority to promulgate rules to govern the structure, content, and operation of FACs. That subsection also gives the Commission the authority to promulgate rules regarding the procedures for the submission, frequency, examination, hearing, and approval of FACs. Section 386.266.13 requires Commission rules for the application process for a FAC to be in effect prior to the Commission issuing an order for a FAC. Commission rule 20 CSR 4240-20.090 *Fuel and Purchased Power Rate Adjustment Mechanism* is the rule that governs the FACs in Missouri.

Key Provisions of the FAC Rule

Overearning

In FAC proceedings between general rate cases,² the Commission only reviews the costs and revenues that were included in the FAC in the previous rate case. Decreases in non-FAC expenses and increases in revenues not included in the FAC are not considered by the Commission. This increases the possibility that the utility over-earns at a time that it is billing for increases in its fuel and purchased power costs. Despite this potential that a FAC could contribute to over-earnings by electric utilities, the FAC rule does not contain an earnings test. However, utilities with a FAC are required to submit quarterly surveillance reports to Staff, OPC, and other parties. These surveillance reports include rate base quantifications, capital quantifications and income statements for the electric utilities as a whole.³ The information from these reports includes the earnings of the electric utility for the prior quarter and could be used in an over-earnings complaint case. However, the Commission, in No. EC-2014-0223,

² Cases filed to change the FAC rate, review the true-up amount, and for prudence reviews of the FAC.

³ 20 CSR 4240-20.090(6).

stated that these surveillance reports alone do not provide a complete or accurate picture of earnings sufficient to reset the utility's rates.⁴

Historical Costs and Revenues

Section 386.266.1 RSMo. requires adjustments to FAC rates to reflect increases and decreases in prudently incurred costs. This means that, before an electric utility can begin billing to recover FAC costs, the costs must be incurred, and any revenues included in the FAC to offset those costs must be received. Therefore, FAC recoveries are based on historical FAC costs and revenues as billed. As required by § 386.266.5 RSMo., interest at the utility's short-term debt rate is applied to the net of these costs and revenues and recovered or returned to the ratepayers through the FAC rate.

FAC Rate Design

Neither the statute nor the FAC rule are prescriptive regarding the design of the rates to collect or return FAC costs to customers. However, 20 CSR 4240-20.090(13) does require that FAC rates reflect differences in losses incurred in the delivery of electricity at different voltage levels for different rate classes. This is because less energy is lost when delivered at higher voltage levels. The differences for each voltage level are based on system loss studies that must be conducted within four years of the filing of each general rate case.⁵ These voltage adjustment factors are set in each general rate increase case.

Incentive Mechanism

While § 386.266.1 RSMo. allows the Commission to include features in an FAC designed to provide the electric utilities with incentives to improve the efficiency and cost-effectiveness of the utilities fuel and purchased-power procurement activities, neither the statute nor the FAC rule is prescriptive regarding what such an incentive feature would look like. The rule allows incentive features to be proposed in rate cases in which an electric utility requests the establishment, continuation, or modification of an FAC.⁶ Incentive features can be proposed for the Commission's consideration by any of the parties in rate cases in which the electric utility is proposing the establishment, continuation, or modification of a FAC.

Inclusion of Revenues

Section 386.266 RSMo. is silent regarding the inclusion in a FAC of any fuel related type of revenues. The Commission rule does not require the inclusion of fuel related revenues, such as revenues from the sale of energy (off-system sales revenues or OSSR), renewable energy credits

⁴ Case no. EC-2014-0223, Report and Order, pg. 19.

⁵ 20 CSR 4240-20.090(13)(B).

⁶ 20 CSR 4240-20.090(14).

("RECs"), or transmission congestion revenues ("TCR")⁷ in a FAC. The rule does require that if a FAC does not include revenues from off-system sales, the FAC must exclude the fuel and purchased power costs incurred to make the off-system sales.⁸

General Structure of FACs in Missouri

While there are some differences in the details of each electric utility's FAC, the general structure of the FACs of each of the electric utilities is the same. In each general rate case in which the FAC is continued or modified, an estimate of normalized/annualized FAC costs and revenues is identified and included in the revenue requirement used to calculate permanent rates of each electric utility. This is known as Net Base Energy Cost or NBEC. A base factor or BF is calculated in each general rate proceeding as the NBEC divided by the rate case normalized net system kilowatt-hours ("kWh"). The BF is the estimated FAC costs per kWh that is included in permanent rates. Likewise, the revenue billed in permanent rates for FAC costs is the base factor multiplied by the actual usage of the customers.

The Commission rule allows the BF to vary within a year. Ameren Missouri's FAC has two base factors – one for the summer months of June through September and one for the other eight months. The other electric utilities have a single BF for the year.

All of the electric utility's FAC rates are volumetric rates (\$/kWh). To derive the FAC rate that is charged the customers in the recovery period, the difference between the actual costs incurred (actual net energy cost or ANEC) and the costs already included and billed through the permanent rates⁹ (NBEC) over the accumulation period, either positive or negative, is divided by the expected energy use of the utility's customers over the recovery period.

Because the FAC rule requires voltage losses to be taken into account in the FAC, a fuel adjustment rate (FAR) is calculated for each of the voltage levels that the utility provides service based on loss factors derived in the last rate case. Because the system losses are greatest for customers served at secondary voltage, the FAR charged these customers is greater than the FAR charged to the customers that receive service at the primary and transmission level. These loss-adjusted FARs are the rates used to bill the increases or decreases in FAC costs to customers. These FAC rates (or FARs) are recovered or returned to customers based on the customer's kWh usage over the designated recovery period.

⁷ Off-system sales revenues are the revenues from sales of energy by the electric utility above what is needed by the utility's customers.

⁸ 20 CSR 4240-20.090(1)(L)1.

⁹ Base factor multiplied by net system input kWh for the accumulation period.

Accumulation and Recovery Periods

An accumulation period is the time over which the electric utility incurs the ANEC. Commission rule allows up to four accumulation periods a year but requires at least one accumulation period a year.¹⁰ The Recovery Period is the time period over which the FAR is billed to the utility's customers. The Recovery Period is limited by Commission rule to twelve months or less.¹¹

The accumulation periods and recovery periods for the electric utilities are shown in the table below.

<u>Electric Utility</u>	<u>Accumulation Periods</u>	<u>Recovery Periods</u>
Ameren Missouri	February through May June through September October through January	October through May February through September June through January
Evergy Metro	January through June July through December	October through September April through March
Evergy West	June through November December through May	March through February September through August
Liberty	September through February March through August	June through November December through May

The recovery periods are twice as long as the accumulation periods for Ameren Missouri, Evergy Metro, and Evergy West. The purpose of having recovery periods longer than the accumulation periods is to minimize the impact of the change in rates on the customers' bills by billing customers over a longer period of time. However, this also results a longer time for the utilities to bill the total amount.

Ameren Missouri's accumulation periods are four months and the costs from the four-month accumulation period are billed (recovered or returned) over eight months. The accumulation periods of Evergy Metro and Evergy West are six months while the recovery periods are twelve months – the maximum allowed by the Commission rule. Liberty is the only Missouri electric utility where the recovery period is the same length as the accumulation period - both are six months.

¹⁰ 20 CSR 4240-20.090(1)(A).

¹¹ 20 CSR 4240-20.090(1)(Y).

The timing of the recovery periods of Ameren Missouri means that customers see both permanent rates and FAR changes in June and October and then see another FAR change, in February. Without alignment of the timing of recovery periods, customers of Ameren Missouri could be impacted by changes in rates up to five times a year – twice in permanent rates (summer and non-summer rates) and three times for the FAC rates. By aligning the change in the FAR with changes for the summer (June) and non-summer (October) permanent rates, customers only see changes three times a year (June, October, and February).

Similarly, the timing of the changes to the FARs for the Evergy Metro and Liberty also minimizes the number of times a year their customers experience rate changes. One of the FAC recovery periods for Evergy Metro occurs in October when permanent rates also change from the summer to non-summer rates. One of Liberty's recovery periods begins in the same month that the permanent rates change for summer resulting in rates changing for Liberty's customers only three times a year. The timing of FAC rate changes for Evergy Metro and Liberty results in their customers seeing changes in rates just three times a year.

Price Signal Resulting From FACs

There is a common misconception that FACs provide customers more “accurate” price signals than permanent rates. There are several reasons this is not true. Timing is essential to provide an accurate price signal. Missouri's FAC is based on historical costs, so customers are not billed the difference in the FAC costs until many months after the costs are incurred. For example, fuel costs incurred in January for Evergy Metro are not billed to its customers until the recovery period that begins in October. By the time that a change in fuel costs is seen on the customers' bills, it is no longer an accurate representation of the fuel cost the utility is experiencing at that time.

In addition, FACs in Missouri do not provide accurate price signals because costs are billed or savings are returned to customers for an accumulation periods of several months. Increases in FAC costs in one month may be offset by decreases in FAC costs in the next month. Thus the costs being billed customers are not reflective of the costs at time the bill is being rendered.

Long recovery periods designed to reduce FAC rate volatility to customers also mutes the price signal to customers. For example, for Evergy Metro any increase in costs in January is recovered over the time period of October of that same year through September of the next year. The increase is spread out over the twelve months of the recovery period so an increase in January combined with changes for all the other months in the accumulation period and then

spread over twelve months of estimated usage. This muted cost is the price signal that the customer is reacting to – not the actual increase in costs that occurred in January.

In addition, the customer would not even be billed for the increase in costs in January until the October billing month. If FAC costs are volatile, during a time period when costs are actually decreasing, the customer may be reacting to an increase in cost in the previous year. In this instance, the FAC is sending the wrong price signal to the customer.

For these reasons the design and application of FACs in Missouri do not send accurate price signals to customers.

True-Up of FACs

Section 386.266.5(2) RSMo. requires that true-ups of FACs occur at least annually. The purpose of a true-up is to make sure that the electric utility recovers all the costs that it is entitled, or all amounts due to the customers are refunded to them. Section 386.266.5(2) RSMo. also requires the true-up amount include interest at the electric utility's short-term interest rate.

A true-up is simply a comparison of the actual FAC costs billed the customers in the recovery period to the amount of costs the FAR was to collect in that recovery period. This difference, either negative or positive, is added as a true-up amount, including interest, to the FAC costs to be billed in the next recovery period.

In practice, true-ups occur after the end of each recovery period. Because Evergy Metro, Evergy West, and Liberty have two recovery periods a year, they have two FAC true-ups a year. There are three FAC true-ups a year for Ameren Missouri since it has three recovery periods a year. The Commission rule requires the utility to file its true-up in a separate case from changes to its FAR.¹²

The true-up amount is determined by the FAC billed not the FAC revenues recovered. This is to reduce complexity of how to deal with under-paid bills. While the FAC amount is separately identified on the customer's bill, the customer that only pays a portion of their bill does not designate what portion of the bill they are paying. The unpaid portion of the bill is treated as uncollectible. The rate case treatment for uncollectibles is determined in the rate case and is not dealt with in the FAC.

¹² 20 CSR 4240-20.090(9)(B).

Prudence Reviews

Section 386.266.5(4) RSMo. requires prudence reviews of the costs in the FAC to occur at least every eighteen (18) months. The process for these reviews by Staff is found in 20 CSR 4240-090(11). Staff has 180 days to conduct its audit and file a report of its audit. Parties to the prudence review¹³ have up to ten days after the report is filed to request a hearing. Staff conducts FAC prudence audits of Evergy Metro and Evergy West simultaneously since they have the same parent company, Evergy, Inc.

Incentive Mechanism

Section 386.266.1 RSMo. allows the Commission to include in a FAC, incentives to improve the efficiency and cost-effectiveness of the electric utilities' fuel and purchased power procurement. For all of the electric utilities, the Commission found that allowing the utility to have one hundred percent recovery of its FAC costs through a FAC would act as a disincentive for the utility to control FAC costs. The Commission determined that an incentive mechanism that recovered a share of the difference between the NBEC and ANEC would allow the electric utilities a sufficient opportunity to earn a fair return on equity while protecting customers by providing an incentive to control costs. The Commission has set that sharing percentage, for all of the electric utilities, to be 95/5, *i.e.* 95% of any increase in FAC costs above the NBEC would be billed to the customers and the electric utility absorbs 5%, while 95% of a decrease in FAC costs below the NBEC would be credited to customers and the electric utility retains 5% of the decrease.¹⁴

Given this incentive mechanism, the amount to be billed through the FAC is 95% *of the difference between the ANEC and the NBEC*. The result of this incentive mechanism is that, even when costs are above the amounts included in permanent rates, the electric utility recovers *almost 100% of its total FAC costs*. If FAC costs are below the amounts included in permanent rates, *the utility recovers more than 100% of its FAC costs*. Table 1 below shows examples of what occurs when actual costs are greater, equal to, and less than what is in the NBEC.

¹³ All parties to the utility's last general rate proceed in which the utility requested the FAC be established, continued or modified are automatic parties to the FAC prudence cases, FAR change cases, and true-up cases. 20 CSR 4240-20.090(1)(V).

¹⁴ While parties in rate cases have proposed different sharing percentages and/or different incentive mechanisms, the only incentive mechanism implemented has been a 95%/5% sharing of the difference between ANEC and NBEC.

Table 1
Impact of 95/5 Sharing Mechanism

NBEC	ANEC	Diff	FAC Amt Billed to Customers	Amt Absorbed/ (Retained) by Company	Total billed to Customers	% FAC Costs Billed
\$100	\$150	\$50	\$47.50	\$2.50	\$147.50	98.3%
\$100	\$110	\$10	\$9.50	\$0.50	\$109.50	99.5%
\$100	\$100	\$0	\$0	\$0	\$100.00	100.0%
\$100	\$90	(\$10)	(\$9.50)	(\$0.50)	\$90.50	100.6%
\$100	\$50	(\$50)	(\$47.50)	(\$2.50)	\$52.50	105%

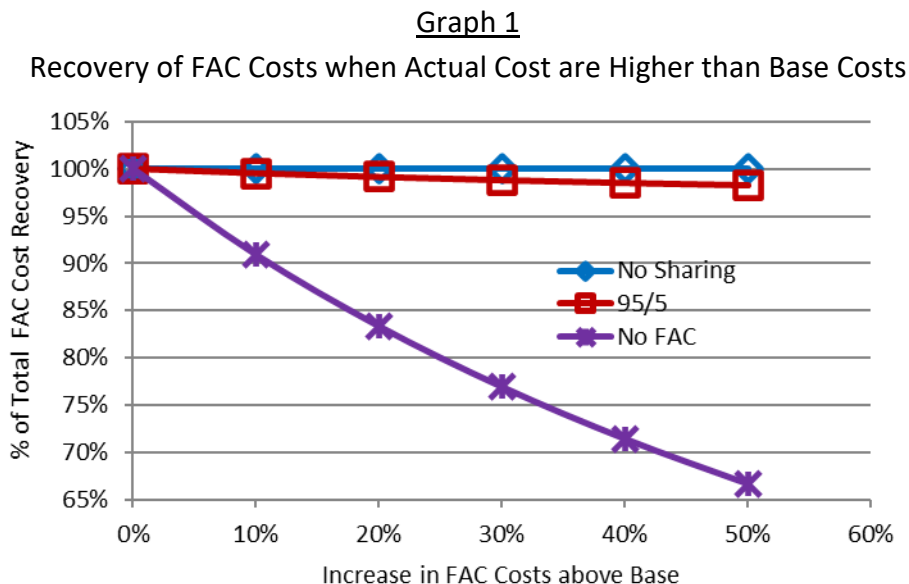
This table shows the incentive mechanism allows the utility to bill its customers for 98.3% of its FAC costs even when its actual costs (ANEC) are 50% higher than what is included in permanent rates, *i.e.* if the actual FAC costs incurred are 50% higher than what was included in the permanent rates (NBEC), the electric utility recovers 98.3% of its actual FAC costs.¹⁵ Without a FAC, that utility would have had to absorb all of the increase in costs. In the example above, the utility would have to absorb the \$50.

At the other extreme, if the utility had a FAC with no sharing mechanism, then the utility would pass on all the extra costs to its customers. In this scenario, there is no reason for a utility to really care about looking for efficiencies in its fuel and purchased power procurement activities because it would not have to absorb any increase in costs. With a FAC with the incentive mechanism ordered by the Commission, the utility would have to absorb \$2.75 of the \$50 increase and customers would be billed the other \$47.50. The Commission determined that this was enough incentive to entice the utilities to look for efficiencies in their fuel and purchased power procurement activities.

Likewise, if a utility did not have a FAC and its costs were lower than what was included in the permanent rates, and if actual fuel costs are 50% lower (\$50 in the table above), then the utility would get to keep 100% of that savings (\$100 collected in permanent rates and \$50 of savings). This is a strong incentive to work to lower fuel and purchased power procurement costs. With a FAC with no sharing, the utility would be required to return all of the savings so there is also no incentive for the utility to try to reduce these costs. With the sharing mechanism ordered by the Commission, the utility will recover 105% (\$52.50) of its actual FAC costs.

¹⁵ For a utility to bill only 95% of its actual costs, the actual FAC costs would need to be over 1,000 times greater than the costs included in permanent rates.

The relationship of cost recovery with a FAC with no sharing (blue diamonds at the top of the graph), a 95%/5% sharing (red squares) when actual costs are above the NBEC, and no FAC (purple asterisks) is shown in the graph below.



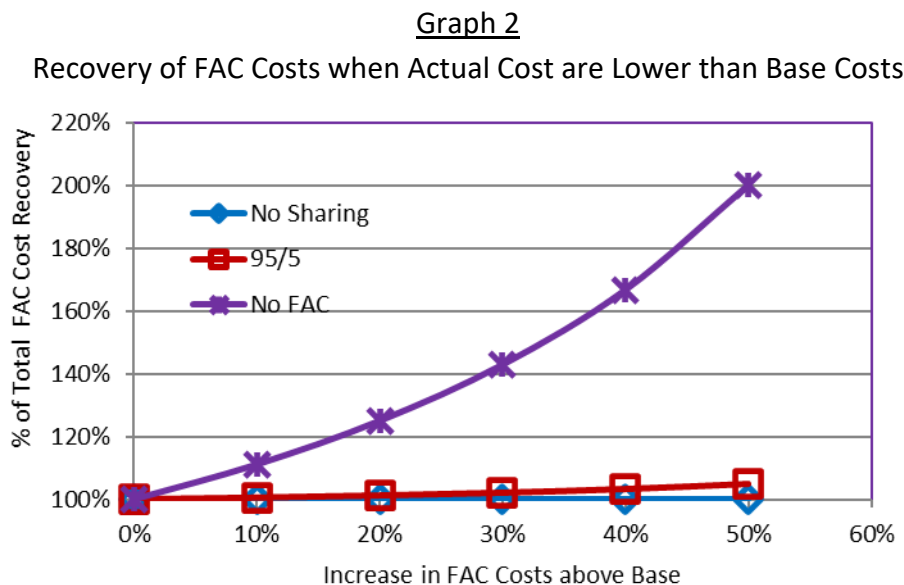
The horizontal axis of Graph 1 is the percentage actual costs incurred are above the base set in the rate case, e.g. 10% means that actual costs, *i.e.* ANEC, were 110% of NBEC, 50% means ANEC was 150% of NBEC. The vertical axis is the percent of the actual fuel cost recovered by the utility both in permanent rates and through the FAC. The 100% on the vertical axis signifies that all costs incurred were recovered. Likewise, the bottom line on the vertical axis would be 65% of the actual costs incurred were recovered while the top line represents 105% of the actual costs being recovered.

This graph shows the impact on cost recovery of three different sharing percentages. The top line on the graph (blue diamonds) is the FAC cost recovery with no sharing, *i.e.* the customers pay 100% of the difference between ANEC and the NBEC. With no sharing mechanism, the customers pay the ANEC regardless of the difference from NBEC. Cost recovery for the utility is 100%. There is no incentive to increase efficiency of the fuel and purchased power procurement because whatever the cost is, the utility will recover that cost.

The line with the red boxes labeled 95/5 shows the total FAC cost recovery for the utility with the Commission's 95/5 sharing mechanism. What this graph shows is that with a 95/5 sharing mechanism and ANEC costs 150% of the NBEC, the utility will recover over 98% of its FAC costs. It is the Commission's belief that this is enough incentive to induce the utilities to act efficiently in their decisions that impact FAC costs and revenues.

Finally, the last scenario, the purple asterisks represent cost recovery of the utility without a FAC. When the ANEC is 110% of NBEC, the utility would collect 91% of its FAC costs. When the ANEC is 150% of the NBEC, the utility would only collect 67% of the costs.

Graph 2 below shows the impact of a FAC and the Commission's sharing mechanism if FAC costs fall below the NBEC.



The horizontal axis on Graph 2 is the percentage actual costs incurred are below the base set in the rate case, e.g. 10% means that ANEC was 90% of NBEC, 50% means ANEC was 50% of NBEC. The vertical axis is the percent of the actual fuel cost recovered by the utility both in permanent rates and through the FAC. The 100% on the vertical axis, now at the bottom of the graph, signifies that all costs incurred are recovered. Likewise, the top line on the vertical axis would be 220% of the actual costs incurred were recovered.

Like in Graph 1, in this graph, the recovery of FAC cost with no sharing mechanism is 100%. This is shown again as the line with blue diamonds. In contrast to Graph 1, 100% cost recovery is at the bottom of Graph 2. With no sharing mechanism, if the ANEC is less than NBEC, 100% of the difference is returned to the customers. Cost recovery for the utility is 100%. There is no incentive to increase efficiency of the fuel and purchased power procurement because the utility receives no benefit from reducing costs.

The line with the red boxes labeled 95/5 shows the total FAC cost recovery for the utility with the Commission's 95/5 sharing mechanism. What this graph shows is that with a 95/5 sharing

mechanism and ANEC costs at 50% of the NBEC, the utility will recover 105% of its FAC costs. This does provide some incentive for the utility to reduce costs.

The last scenario, the purple asterisks at the top, represents cost recovery without a FAC. When the ANEC is 90% of NBEC, the utility would collect 111% of its FAC costs. When the ANEC is 50% of the NBEC, the utility would collect 200% of the costs. This scenario provides the most incentive to reduce ANEC

While the symmetry of the sharing mechanism may seem to be beneficial to both customers and the utility, it is only symmetrical if the risk of increasing and decreasing cost are equal. However, it is one sided in that it is the utility that decides whether or not to request a FAC. If the utility truly believes that it was equally likely for cost to decrease as it is for costs to increase, it would not ask for a FAC because without a FAC, the utility keeps all of the decrease thus increasing its earnings; with an FAC, the utility has to return the decrease.

Importance of Setting the NBEC Correctly

Because Missouri's FACs are based on the difference between NBEC, a set of normalized costs and revenues set in a rate case, and ANEC, actual costs and revenues, it is important that the costs and revenues included in the base factor used to calculate NBEC are the same as the costs and revenues included in permanent rates. The table below shows three different scenarios: 1) the costs included in permanent rates are the same as the costs included in the base factor; 2) the costs included in permanent rates are less than the costs included in the base factor; and 3) the cost included in permanent rates are greater than the costs included in the base factor. To simplify the example, in these scenarios there is no sharing of the difference between ANEC and NBEC; all the difference between the ANEC and NBEC is billed or returned to the customers.

Table 2
Impact of Incorrectly Setting NBEC

Row	Net Base Energy Cost (NBEC)	FAC Costs in Permanent Rates	Actual Net Energy Cost (ANEC)	Billed FAC Costs	Total FAC Costs Billed	Total billed as % of ANEC
Scenario 1 - NBEC Equal FAC Costs in Rates						
1A	\$100.00	\$100.00	\$110.00	\$10.00	\$110.00	100.00%
1B	\$100.00	\$100.00	\$100.00	\$0.00	\$100.00	100.00%
1C	\$100.00	\$100.00	\$90.00	-\$10.00	\$90.00	100.00%
Scenario 2 - NBEC Lower than FAC Costs in Rates						
2A	\$100.00	\$110.00	\$110.00	\$10.00	\$120.00	109.09%
2B	\$100.00	\$110.00	\$100.00	\$0.00	\$110.00	110.00%
2C	\$100.00	\$110.00	\$90.00	-\$10.00	\$100.00	111.11%
Scenario 3 - NBEC Higher than FAC Costs in Rates						
3A	\$100.00	\$90.00	\$110.00	\$10.00	\$100.00	90.91%
3B	\$100.00	\$90.00	\$100.00	\$0.00	\$90.00	90.00%
3C	\$100.00	\$90.00	\$90.00	-\$10.00	\$80.00	88.89%

The first scenario is NBEC equal to the FAC costs included in permanent rates. This is the correct treatment of NBEC and FAC costs in rates. In this scenario, when ANEC is \$10 higher than NBEC (row 1A), the total FAC costs billed the customer is the \$100 billed in permanent rates and \$10 is billed the customers through the FAC for a total of \$110. When the ANEC is the same as the NBEC (row 1B), the customers are billed nothing through the FAC, and the utility recovers all its FAC costs through its permanent rates. Lastly, when the actual costs are \$10 less than the NBEC (row 1C), the utility bills the customers \$100 in the permanent rates but then the customers' bills are reduced \$10 through the FAC resulting in the utility recovering \$90 – its actual fuel costs.

In Scenario 2, the NBEC designated in the FAC is less than the FAC costs in permanent rates. In this scenario, the customers are billed more in permanent rates than the NBEC in the FAC. Even when ANEC is the same as the FAC costs included in permanent rates (row 2A), customers are charged more because the FAC charge is based on the NBEC (\$100), not the FAC costs included in permanent rates (\$110). The customers pay the \$110 in permanent rates for fuel and also the difference between ANEC and the NBEC (\$110 - \$100 = \$10) for a total of \$120.

When the ANEC is the same as the NBEC (row 2B), the customers end up being billed more than the ANEC because the FAC costs included in the rates (\$110) was greater than the NBEC (\$100). Finally, when the ANEC is less than the NBEC (row 2C), customers are billed more than the

ANEC (\$90) through the permanent rates (\$110) and the FAC adjustment of -\$10 is to that higher billed amount. Therefore, even though the ANEC was \$90, the customer is billed \$100 (\$110 - \$10)

In Scenario 3, the NBEC is set higher than the FAC costs included in rates. In this scenario, the electric utility will never bill the actual energy costs because the amount of FAC costs recovered in the permanent rates is less than the NBEC set in the FAC. When the ANEC is higher than the NBEC (row 3A), the FAC billed will not result in the utility billing the ANEC (\$110) as intended because the amount billed through the permanent rates (\$90) is lower than the NBEC (\$100) to which the ANEC is compared. When the ANEC is the same as the NBEC (row 3B), the utility does not bill its ANEC because the FAC rate is zero and the permanent rates (\$90) do not collect the NBEC (\$100). Finally, when the ANEC is less than the NBEC (row 3C), the difference (\$90 - \$100 = -\$10) is returned to customers while the permanent rate (\$90) does not recover NBEC (\$100).

These scenarios show the importance of insuring that the FAC costs included in permanent rates are the same as the FAC NBEC. If they are not set correctly, either the customers overpay, or the utility is not afforded the opportunity to recover its costs as intended.

Impact of Regional Transmission Organizations

Section 386.266.1 RSMo. allows for a mechanism that “reflect[s] increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation.” Since transmission costs are the cost to “transport” purchased power, transmission costs are included in the FACs in Missouri. However, the drafters of section 386.266 RSMo. could not have correctly imagined how the energy markets of the independent system operators (“ISO”) and regional transmission organizations (“RTO”) would impact the provision of energy to Missouri electric customers redefining the common terms purchased power, off-system sales, and transmission costs. The Commission has set the following parameters around some of the RTO costs and revenues.

Transmission Costs

The utilities began asserting that all the MISO and SPP costs should be included in the FAC because through the requirement of MISO and SPP to make a payment to for each MWh of load required by utilities customers. Therefore, the utilities argued that they were “purchasing” all the energy it needed from the MISO or SPP. The Commission found in Case No. ER-2014-0258 that:

The drafters of the FAC statute likely did not envision a situation where a utility would consider all its generation purchased power or off-system sales. In fact, the policy underlying the FAC statute is clear on its face. The statute is meant to insulate the utility from unexpected and uncontrollable fluctuations in transportation costs of purchased power. At the time the statute was drafted, and even in our more complex present-day system, the costs of transporting energy in addition to the energy generated by the utility or energy in excess of what the utility needs to serve its load are the costs that are unexpected and out of the utility's control to such an extent that a deviation from traditional rate making is justified.¹⁶

The Federal Energy Regulatory Commission ("FERC") issued FERC Order 668 that required electric utilities that were members of RTOs and Independent System Operators ("ISO") to, in each hour net their cleared load and generation and report that net amount as either: (i) sale for resale (i.e. off-system sale under account 447 when the utility's cleared generation exceeds the cleared load), or (ii) a power purchase under Account 555 when the utility's cleared load exceeds its cleared generation. The FERC order states "Netting accurately reflects what participants would be recording on their books and records in the absence of the use of an RTO market to serve their native load. The Commission determined that the purchased power definition in FERC Order 668 was considered "true purchased power."

The Missouri Commission concluded that the RTO costs that should be included in Missouri utilities are:

- 1) costs to transmit electric power it did not generate to its own load (true purchased power) and 2) costs to transmit excess electric it is selling to parties to locations outside of [its RTO or ISO] (off system sales)."
- 2) Similar language was repeated in general rate cases for Liberty (ER-2014-0351) and Evergy Metro (ER-2014-0370).¹⁷

The amount included in the FAC is a percentage of the SPP or MISO transmission cost. It is determined in each general rate case through the fuel and purchased power modeling process because it changes over time depending on the generation resource changes of the utilities between rate cases.

¹⁶ Case No. ER-2014-0258, *Report and Order*, pg. 115.

¹⁷ *Id.*

The percentage of costs included in the FAC is calculated in each rate case. In each hour of the year, the modeled generation is netted against the normalized net system energy need for that hour to determine if an off-system sale was made or whether power was purchased. The purchased power megawatt-hours (“MWh”) as defined by FERC Order 668¹⁸ are summed over the year. Any modeled purchased power agreement (“PPA”) generation¹⁹ is added to the FERC Order 668 purchased power. This “total” purchased power MWh is divided by the normalized net system energy to determine a percentage of the electric utility energy requirement that is “purchased” to meet the load requirements of the utility. This is the percentage is applied to the normalized MISO and SPP transmission charges in each rate case to determine the amount of transmission included in the FAC’s NBEC. The same percentage is applied to the actual transmission costs incurred in determining the ANEC.

These percentages are different for each utility and change each rate case.

A normalized amount for total transmission cost is included in revenue requirement and recovered in permanent rates. However, only this percentage of the transmission costs are included in the FAC. This allows for a percentage *of the change* in the transmission costs to be recovered or returned through the FAC between general rate cases.

Transmission Revenues

For some of the transmission cost charges of the MISO and SPP, there are also the potential for transmission revenues. Only Ameren Missouri’s FAC includes transmission revenues at the percentage that transmission costs are included. There are no transmission revenues included the FACs of Evergy Metro, Evergy Missouri West, or Liberty.

Administrative Costs

Regarding SPP and MISO administrative fees, the Commission has consistently found that these fees are administrative in nature and not directly linked to fuel and purchased power costs. These fees support the operation of SPP or MISO and are not needed to buy and sell energy to meet the needs of the utilities’ customers. These fees are neither fuel and purchased power expenses nor transportation expenses incurred to deliver fuel or purchased power. Therefore, the Commission has concluded that including such fees would be unlawful under Section 386.266.1, RSMo, and, therefore, should not be included in the FAC.²⁰

¹⁸ In the hour, the amount the load requirement was greater than the generation sold into the market.

¹⁹ Contracted PPAs between the utility and a resource.

²⁰ Case no. ER-2014-0370, *Report and Order*, pg. 36.

This does not mean that the utilities cannot recover these fees but that these fees are included in the revenue requirement used to determine permanent rates. Changes in these fees between rate cases just are not passed on to customers between general rate cases.

Capacity Contracts

As specified in the FAC tariff sheets for each of the utilities, only short-term (less than a year) PPA capacity charges are included in the FACs in Missouri. Typically, capacity costs for contracts for a year or more are known and fixed. They do not meet the volatile and unpredictable characteristics of costs included in the FAC. They are included in the revenue requirement of the utility, but changes to the capacity costs in contracts are not included in the FAC.

This does create an incentive for the utilities to enter contracts of 364 days. It also creates an incentive for utilities to enter into contracts where the capacity payment is received through an energy charge.

MISO currently has a capacity market where Ameren Missouri is required to participate in. Ameren Missouri pays capacity charges to MISO and receives revenue for its capacity from MISO. Because these amounts change regularly and are unpredictable, these capacity charges and revenues are included in Ameren Missouri's FAC.

Conclusion

It is the intent of this whitepaper to give the reader a basic understanding of the design and application of the FAC in Missouri as of December 2025. The FAC in Missouri is continually being refined and modified. The design of the FAC is considered and typically slightly modified in each rate case. Section 386.266.5(3) requires that a utility with a FAC file a general rate case every four years.²¹ There have been instances where a utility came in for a general rate case only because it was required to do so by Section 386.266. However, typically general rate cases are filed before the general rate case timing required by Section 386.266.

A detailed description of each utility's FAC can be found in their tariffs filed with the Missouri Commission. These can be found at <https://www.efis.psc.mo.gov/> under "Utility Compliance e-Filings & Search, Tariff Search.

²¹ The actual language is "the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism."