



Robin Carnahan
Secretary of State

FILED³
OCT 24 2006
Missouri Public
Service Commission

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 6074
Date Printed: 10/23/2006
Rule Number: 4 CSR 240-3.161
Rulemaking Type: Final Order Rule
Date Submitted to Administrative Rules Division: 10/23/2006
Date Submitted to Joint Committee on Administrative Rules: 9/21/2006

Name of Person to Contact with questions concerning this rule:

Content: Colleen Dale	Phone: 573-751-4255	Email: cully.dale@psc.mo.gov	Fax: 573-526-6010
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter

10/23/2006

Print Close

Robin Carnahan

Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Administrative Rules Stamp

RECEIVED

OCT 23 2006

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

- A. Rule Number 4 CSR 240-3.161
Diskette File Name 3.161
Name of person to call with questions about this rule:
Content Colleen M. Dale Phone 573-751-4255 FAX 573-526-6010
E-mail address cully.dale@psc.mo.gov
Data entry same Phone _____ FAX _____
E-mail address _____
Interagency mailing address Governor Office Bldg, Suite 900
Statutory Authority 386.250, .266 Current RSMo date 2005
Date filed with the Joint Committee on Administrative Rules Sept. 21, 2006
- B. CHECKLIST guide for rule packets:
- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Forms, number of pages _____ |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority section with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost statement |
| <input type="checkbox"/> Small business impact statement | <input type="checkbox"/> Private cost statement |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing date |
- C. RULEMAKING ACTION TO BE TAKEN
- ☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination
MUST include effective date _____
- ☐ Proposed Rulemaking (choose one) ☐ rule, ☐ amendment, or ☐ rescission
☒ Order of Rulemaking (choose one) ☒ rule, ☐ amendment, ☐ rescission, or ☐ termination
MUST complete page 2 of this transmittal
- ☐ Withdrawal (choose one) ☐ rule, ☐ amendment, ☐ rescission or ☐ emergency)
☐ Rule action notice ☐ In addition ☐ Rule under consideration
- D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff _____

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

SEP 21 2006

ADMINISTRATIVE RULES

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-3.161

1a. Effective Date for the Order

☒ Statutory 30 days

Specific date _____

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

☒ YES ☐ NO

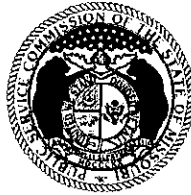
1c. If the answer is YES, please complete section F.

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

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

See attached.

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



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

WARREN WOOD
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

October 23, 2006

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

Dear Secretary Carnahan:

Re: 4 CSR 240-3.161, Electric Utility Fuel and Purchased Power Adjustment
Charges and Interim Energy Charge Mechanisms Filing and Submission
Requirements.

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing on this 23rd day of October, 2006.

Statutory Authority: Sections 386.250(6) RSMo 2000 and 386.266 RSMo Supp 2005

If there are any questions regarding the content of this order of rulemaking, please contact:

Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street, P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Colleen M. Dale".

Colleen M. Dale
Secretary
Missouri Public Service Commission

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service commission
Chapter 3 – Filing and Reporting Requirements**

RECEIVED

OCT 23 2006

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2000 and 386.266, RSMo Supp. 2005, the Commission adopts a rule as follows:

**4 CSR 240-3.161 Electric Utility Fuel and Purchased Power
Adjustment Charges and Interim Energy Charge
Mechanisms Filing and Submission Requirements is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1063). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Public hearings on this proposed rule and proposed rule 4 CSR 240-20.090 were held on August 22, 2006 in Kansas City; August 22, 2006, in Grandview; August 23, 2006, in St. Louis; August 23, 2006, in Overland; August 29, 2006, in Cape Girardeau; September 6, 2006, in Joplin; and September 7, 2006, in Jefferson City; the public comment period ended September 7, 2006. Timely filed written comments were received from seven (7) individuals and fourteen (14) groups or companies. A total of twenty (20) persons commented at the local hearings. Ten parties represented by counsel, providing either comments or the testimony of witnesses, participated in the hearing in Jefferson City. Written comments were received from Missouri Association for Social Welfare (MASW), Missouri Industrial Energy Consumers, Praxair, Inc., AG Processing Inc., Sedalia Industrial Energy Users Association (SIEUA), Noranda Aluminum, Inc., MO PSC Staff, Office of the Public Counsel, AARP, Missouri Attorney General's Office, Union Electric Company d/b/a AmerenUE, Older Women's League-Gateway St. Louis Chapter (OWL), William Hinckley on behalf of BioKyowa Inc., The Empire District Electric Company, Victor Grobelny, Kenneth and Jan Inman, Capt. Frank Hollifield on behalf of the U.S. Air Force, Terry Schoenberger, and Joan M. Berger. Persons commenting at the local hearings were: Melanie Shouse, John Moyle, Dennis Anderson, Angela Steele, Scott Apell, Joan Bray, Alberta C. Slavin, Eddie Hasan, Bob William, Curtis Royston on behalf of the Human Development Corp., Yaphett El-Amin, Fran Sisson, John Cross, Jamilah Nasheed, Becky Mansfield, Marvin Sands, Jean Wulser, Ann Johnson, Franklin C. Walker, William T. Hinckley, Tom Wigginton, Kevin Priestler, and Bill Pate. Counsel appearing in Jefferson City were Steven Dottheim on behalf of the PSC Staff, with witness Warren Wood, Lewis Mills, the Public Counsel with witnesses Russ Trippensee and Ryan Kind, John Coffman on behalf of the AARP and the Consumers Council of Missouri, Douglas Micheel on behalf of the Attorney General of Missouri, Diana Vuylsteke on behalf of the Missouri Industrial Energy Consumers (MIEC) with witness

JOINT COMMITTEE ON

SEP 21 2006

ADMINISTRATIVE RULES

Maurice Brubaker, Jim Lowery on behalf of AmerenUE with witness Martin Lyons, Stu Conrad on behalf of Noranda with witness George Swogger, Stu Conrad on behalf of the SIEUA, Praxair and AG Processing, Dennis Williams on behalf of Aquila and Jim Fischer on behalf of Kansas City Power and Light. Comments from laypeople were generally against the rules, because they believed a rate adjustment mechanism (RAM) would result in higher rates, would make rates more volatile, would remove incentives for efficiency and unjustly enrich utilities. Several lay commenters suggested that 50% of fuel costs be passed on to consumers and that 50% be paid for by the utility and its shareholders. Industry commenters supported or opposed a cap on the RAM, supported or opposed the utility "veto" provision, supported or opposed apportioning fuel costs between base rates and a RAM, and generally opposed the transition provisions. Both industry and lay commenters opposed or supported the rule in its entirety, some asserting that it was unnecessary and within the Commission's discretion to not adopt the rule and others asserting that the Commission was required to adopt rules in response to a legislative mandate. Comments are available for review in their entirety at www.psc.mo.gov, choose EFIS, Agree to Terms, Resources, highlight Case No., and type in EX-2006-0472. No comments were made concerning the proposed forms, which are adopted without change.

COMMENT: Some commenters assert that rules that more simply set out the application process should be adopted instead of the detailed proposed rules, that the current level of complexity could cause potential delays in rate adjustments, and that the extensive monthly and quarterly reporting requirements in these rules are unduly burdensome and of limited benefit. PSC Staff asserts that the requirements for detailed information are narrowly drafted and that only certain portions of the rules apply to certain types of filings, so some provisions are repeated in different sections, but it is much more convenient for the reader to have the rule sectionalized in this manner.

RESPONSE: The Commission finds that the complexity of the proposed rule is necessary in light of the fact that it establishes a procedure that has not been used by the Commission in rate cases in the past. The Commission expects that it will be necessary in the future to amend these rules both to remove requirements that serve no purpose and to add provisions the need for which it cannot now anticipate. After the lengthy, collaborative process that has been used to develop this rule, the proposed rule represents this Commission's best estimate of what will be necessary, useful information and what will not. Therefore, the rule will continue to contain its present level of detail until experience with it dictates change.

COMMENT: Some commenters believe these rules should not include a requirement that the rules be reviewed in the future. The proposed rules include a December 31, 2010, review requirement that does not mandate a new rulemaking, but only requires that the rules be reviewed for effectiveness. PSC Staff believes this as a reasonable requirement, given their content and complexity.

RESPONSE AND EXPLANATION OF CHANGE: In light of the response to the preceding comment, the Commission finds it appropriate to leave in the date certain by which the rules will be reviewed. Therefore, the recommended new (17) will be included

to clarify that the rules in this chapter are subject to the same review timeframe as those set forth in chapter 20.

COMMENT: AmerenUE opposes the use of the word "complete" in subsections (1), (2) and (3), which contain the filing requirements of the rule, for example, a requirement to provide a "complete explanation" or a "complete description." AmerenUE seeks to change "complete" as it appears throughout the rule to "reasonable." AmerenUE asserts that "complete" means "perfect," and that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. PSC Staff disagrees, and asserts that the rule should require a "complete" explanation of the data provided.

RESPONSE: The Commission agrees that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. However, the Commission disagrees that "complete" means "perfect." By using "complete" the Commission means that which includes every explanation and detail to allow a decision-maker to evaluate the response fully and on its face, without forcing it to resort to asking for additional explanations, clarification or documentation to reach a decision. "Complete" means "not lacking in any material respect," which is a reasonable standard for filings. Moreover, the purpose of the rule is to alert requesting parties of the documentation and information necessary for the Staff to review and for the Commission to approve a rate adjustment mechanism (RAM) within the allotted time for a general rate case. If incomplete information is provided, the entities reviewing the documentation would be required to request further detail in order to evaluate the proposed RAM. The Commission finds that "complete" is the most appropriate word to convey the amount of information or documentation that is required for review. Therefore, no change will be made.

COMMENT: The Attorney General asserts that the definition of fuel and purchased power costs as "prudently incurred and used fuel and purchased power costs, including transportation costs" in (1)(A) is too broad and could allow increased fuel costs caused by inappropriate or negligent acts or omissions of the electric utility to be included in the RAM, and that the single standard of "prudence" would not preclude such inclusion. The Attorney General recommends the following inclusion "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." The Attorney General suggests similar changes where the phrase "prudently incurred costs" appears.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that the prudence standard alone is insufficient and that increased costs resulting from negligent or wrongful acts should not be included in a RAM, as set forth below. The Commission believes the single addition of language in (1)(A) will be sufficient.

COMMENT: Some commenters want more specificity and definitions about what costs can be included in a RAM. PSC Staff notes that certain inclusions or exclusions should be clearly stated, but feels that the rule should be flexible as to what costs the utility may seek to recover in a RAM, consistent with Section 386.266, as parties may wish to consider different costs and revenues when dealing with different electric utilities.

RESPONSE: The Commission finds that the present level of specificity is sufficient; no further specificity, beyond the exclusion discussed in the preceding comment, is warranted. Therefore, no change will be made.

COMMENT: PSC Staff suggests that (1)(E) be clarified that a RAM can be either a fuel adjustment clause or interim energy charge.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds it reasonable to make such clarification, as set forth below.

COMMENT: The Attorney General recommends that the phrase "initiated by the file and suspend method" be inserted into the definition of general rate proceeding.

RESPONSE: While the Attorney General is correct about the technical description of the ways to initiate a general rate proceeding, the insertion of the language is not necessary to clarify the sort of proceeding in which a RAM may be sought. Therefore, no change will be made.

COMMENT: In subsections (2)(B) and (3)(B), which require an example bill showing the RAM, 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.

RESPONSE: The Commission finds this suggestion to be unworkable in that it will be difficult to discern what portion, if any, is not attributable to fuel costs or constitutes "profit" in the context of a RAM and whether adding another line item to customer bills will be less confusing or more confusing. Therefore, no change will be made.

COMMENT: PSC Staff suggests that (2)(F) and (3)(F) be clarified that an IEC only has a refundable portion to be trued-up, which is different from the FAC, although they are both types of RAMs.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds this suggestion reasonable and will clarify the language in (2)(F) and (3)(F) as set forth below.

COMMENT: PSC Staff suggests that in (3)(O) grammatical changes be made to make the plurals consistent and remove an extraneous "and."

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds this suggestion reasonable and will correct the language in (3)(O) as set forth below.

COMMENT: PSC Staff suggests that (4)(B) be clarified that an IEC only has over-collections to be refunded, which is different from the FAC, although they are both types of RAMs.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds this suggestion reasonable and will clarify the language in (4)(B) as set forth below.

COMMENT: PSC Staff suggests that (4) be corrected to refer 4 CSR 240-20.090(2) rather than 4 CSR 240-20.090(3) and that (4)(A) be corrected to refer 4 CSR 240-20.090(3)(C) rather than 4 CSR 240- 20.090(3)(D);

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds this suggestion reasonable and will correct the references in (4) and (4)(A) as set forth below.

COMMENT: AmerenUE suggests that the surveillance reporting required in (5) be compiled and reported monthly but submitted quarterly, not monthly, as monthly submission is unduly burdensome and of limited benefit. More frequent reporting creates unnecessary costs, which increases rates. The PSC Staff asserts that the monthly and quarterly reporting presently contained in the proposed rule will be of value and will be used by the parties in monitoring RAM operations and RAM credits and charges, true-up account monitoring, prudence audits and monitoring of utility earnings.

RESPONSE: In light of the fact that surveillance reports can be submitted electronically, the Commission finds that, as the reports are compiled and maintained on a monthly basis, submitting them monthly rather than quarterly is not unreasonable. Therefore, no change will be made.

COMMENT: AmerenUE suggests that in (6), since surveillance monitoring reports will be available to parties other than Staff and OPC, who have statutory confidentiality obligations, it is necessary that such reports be deemed "Highly Confidential."

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that the reports should be declared highly confidential, subject to the standard procedure for challenging such classification. The Commission is presently in the process of proposing a rule that will allow for classification of information without the issuance of a protective order, but will continue to use its standard protective order until that rule is final. The language in (6) will be modified to treat the surveillance reports as highly confidential as set forth below.

COMMENT: AmerenUE asserts that (6)(C) assumes that each utility budgets in the same manner, and that each utility prepares budgets based upon regulatory accounting principles as opposed to financial (GAAP) accounting principles, because the rule requires the budgeting report to conform to the surveillance report format. The budgeting process should not be driven by these surveillance reports.

RESPONSE: The Commission finds that the requirement in (6)(C) does not require utilities to change the way they create their budgets, but simply requires that the budget be submitted in a uniform format for review. Therefore, no change will be made.

COMMENT: AmerenUE asserts that (7)(A)1.F. appears calculated to prevent inclusion of costs in the rate adjustment mechanism even if the utility has not received any insurance proceeds, and even if there has been no prudence disallowance. The true-up and prudence review provisions of SB 179 are designed to make after-the-fact adjustments, with interest, for items such as this. Before-the-fact preclusion of recovery of these costs is inappropriate and contrary to the statute, and is unnecessary to protect ratepayers, who will be fully protected by mandated true-ups and prudence reviews. Also, if additional requirements are to be imposed with regard to a particular FAC, those

requirements should be spelled out in the order approving the RAM. The PSC Staff asserts that the language in the rule is appropriate in that it requires the utility to identify any costs subject to insured loss or litigation and clarifies to the utility that such costs may not be recoverable as long as they are so subject. The PSC Staff believes this serves as an appropriate incentive to the utility to vigorously pursue the funds tied up in litigation.

RESPONSE: The Commission finds that the methodology put forth by the PSC Staff creates a greater incentive to expeditiously resolve such matters than the required interest payments noted by AmerenUE. Therefore, no change will be made.

COMMENT: AmerenUE notes that (9) – (14) contain provisions that make those parties who participated in the case in which a RAM is created parties to any subsequent proceedings concerning that RAM and subsequent rate cases. AmerenUE does not object to discovery from those proceedings to be used in those subsequent proceedings, with updated responses. The principal change AmerenUE seeks is that in subsequent general rate proceedings, those desiring to be parties to that case need to become intervenors in that proceeding according to established Commission rules. This is practical, fair and consistent with the proposed rule, in particular, (14), which contemplates that each general rate proceeding produces a new rate adjustment mechanism.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that in subsequent general rate proceedings, those seeking to participate must seek and be granted intervention to become parties in the subsequent rate case, since carrying over intervenor status from previous cases is administratively burdensome for both the utility and the Commission. Therefore, (10)(A) will be amended accordingly, as fully set forth below.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED RULE

4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements

(1) As used in this rule, the following terms mean:

(A) 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 cost only reflect the

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

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

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

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

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

(C) 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;

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

(E) Rate adjustment mechanism (RAM) means either a fuel adjustment clause (FAC) or an interim energy charge (IEC);

(F) Staff means the staff of the Public Service Commission; and

(G) 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.

(2) When an electric utility files to establish a RAM as described in 4 CSR 240-20.090(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(2)(D);

- (B) An example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills in accordance with 4 CSR 240-20.090(8);
- (C) Proposed RAM rate schedules;
- (D) A general description of the design and intended operation of the proposed RAM;
- (E) A complete explanation of how the proposed RAM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;
- (F) A complete explanation of how the proposed FAC shall be true-up to reflect over-or under-collections, or the refundable portion of the proposed IEC shall be true-up, on at least an annual basis;
- (G) A complete description of how the proposed RAM is compatible with the requirement for prudence reviews;
- (H) A complete explanation of all the costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records;
- (I) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RAM and the specific account where each such revenue item is recorded on the electric utility's books and records;
- (J) A complete explanation of any incentive features designed in the proposed RAM and the expected benefit and cost each feature is intended to produce for the electric utility's shareholders and customers;
- (K) A complete explanation of any rate volatility mitigation features designed in the proposed RAM;
- (L) A complete explanation of any feature designed into the proposed RAM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed RAM;
- (M) A complete explanation of the specific customer class rate design used to design the proposed RAM base amount in permanent rates and any subsequent rate adjustments during the term of the proposed RAM;
- (N) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed 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;
- (O) The supply-side and demand-side resources that the electric utility expects to use to meet its loads in the next four (4) true-up years, the expected dispatch of those resources, the reasons why these resources are appropriate for dispatch and the heat rates and fuel types for each supply-side resource; in submitting this information, it is recognized that supply- and demand-side resources and dispatch may change during the next four (4) true-up years based upon changing circumstances and parties will have the opportunity to comment on this information after it is filed by the electric utility;
- (P) A proposed schedule and testing plan with written procedures for heat rate tests and/or efficiency tests for all of the electric utility's nuclear and non-nuclear

generators, steam, gas, and oil turbines and heat recovery steam generators (HRSG) to determine the base level of efficiency for each of the units;

(Q) Information that shows that the electric utility has in place a long-term resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service;

(R) If emissions allowance costs or sales margins are included in the RAM request and not in the electric utility's environmental cost recovery surcharge, a complete explanation of forecasted environmental investments and allowances purchases and sales; and

(S) Authorization for the commission staff to release the previous five (5) years of historical surveillance reports submitted to the commission staff by the electric utility to all parties to the case.

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described by 4 CSR 240-20.090(2) in which it requests that its RAM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(2)(D);

(B) If the electric utility proposes to change the identification of the RAM on the customer's bill, an example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills, including the proposed language, in accordance with 4 CSR 240-20.090(8);

(C) Proposed RAM rate schedules;

(D) A general description of the design and intended operation of the proposed RAM;

(E) A complete explanation of how the proposed RAM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(F) A complete explanation of how the proposed FAC shall be trued-up to reflect over-or under-collections, or the refundable portion of the proposed IEC shall be trued-up, on at least an annual basis;

(G) A complete description of how the proposed RAM is compatible with the requirement for prudence reviews;

(H) A complete explanation of all the costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RAM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(J) A complete explanation of any incentive features designed in the proposed RAM and the expected benefit and cost each feature is intended to produce for the electric utility's shareholders and customers;

(K) A complete explanation of any rate volatility mitigation features in the proposed RAM;

- (L) A complete explanation of any feature designed into the proposed RAM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed RAM;
 - (M) A complete explanation of the specific customer class rate design used to design the proposed RAM base amount in permanent rates and any subsequent rate adjustments during the term of the proposed RAM;
 - (N) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed 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;
 - (O) A description of how responses to subsections (B) through (N) differ from responses to subsections (B) through (N) for the currently approved RAM;
 - (P) The supply-side and demand-side resources that the electric utility expects to use to meet its loads in the next four (4) true-up years, the expected dispatch of those resources, the reasons why these resources are appropriate for dispatch and the heat rates and fuel types for each supply-side resource; in submitting this information, it is recognized that supply- and demand-side resources and dispatch may change during the next four (4) true-up years based upon changing circumstances and parties will have the opportunity to comment on this information after it is filed by the electric utility;
 - (Q) The results of heat rate tests and/or efficiency tests on all the electric utility's nuclear and non-nuclear steam generators, HRSG, steam turbines and combustion turbines conducted within the previous twenty-four (24) months;
 - (R) Information that shows that the electric utility has in place a long-term resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service;
 - (S) If emissions allowance costs or sales margins are included in the RAM request and not in the electric utility's environmental cost recovery surcharge, a complete explanation of forecasted environmental investments and allowances purchases and sales; and
 - (T) Any additional information that may have been ordered by the commission to be provided in the previous general rate proceeding.
- (4) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described in 4 CSR 240-20.090(2) in which it requests that its RAM be discontinued, the electric utility shall file with the commission and serve parties as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:
- (A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(3)(C);
 - (B) A complete explanation of how the over-collection or under-collections of the FAC or the over-collections of the IEC that the electric utility is proposing to discontinue shall be handled;
 - (C) A complete explanation of why the RAM is no longer necessary to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(D) A complete explanation of any change in business risk to the electric utility resulting from discontinuation of the adjustment mechanism in setting the electric utility's allowed return, in addition to any other changes in business risk experienced by the electric utility; and

(E) Any additional information that may have been ordered by the commission to be provided.

(5) Each electric utility with a RAM shall submit, with an affidavit attesting to the veracity of the information, the following information on a monthly basis to the auditing manager of the commission, the Office of the Public Counsel (OPC) and others, as provided in sections (9) through (11) in this rule. This submittal to the commission may be made through the commission's electronic filing and information system (EFIS). The following information shall be aggregated by month and supplied no later than sixty (60) days after the end of the month being reported on when the RAM is in effect. The first submission shall be made within sixty (60) days after the end of the first complete month after the RAM goes into effect. It shall contain, at a minimum:

(A) The revenues billed pursuant to the RAM by rate class and voltage level;

(B) The revenues billed through the electric utility's base rate allowance by rate class and voltage level;

(C) The electric utility's actual fuel and purchased power costs allocated by rate class and voltage level using commission approved allocation methods;

(D) All significant factors that have affected the level of RAM revenues and fuel and purchased power expenses along with workpapers documenting these significant factors;

(E) The difference, by rate class and voltage level, between the total fuel and purchased power revenues collected through base rates and the RAM and the fuel and purchased power expenses incurred;

(F) Off-system sales revenue;

(G) Off-system sales expenses;

(H) Off-system megawatt-hour sales;

(I) Megawatt-hours generated, fuel consumption and expense, and heat rates by generating facility;

(J) Megawatt-hours purchased with firm and non-firm purchases separately stated;

(K) Prices of fuel purchased by fuel type breaking out freight and transportation prices;

(L) The electric utility's monthly fuel report. If the electric utility proposes to change the contents or name of the fuel reports, staff, OPC and others that receive the information will be contacted thirty (30) days in advance of the change and notified of such actions. Staff, OPC and others that receive the information shall have the opportunity to discuss the further availability of such information. Specifically the monthly fuel reports are identified as:

1. Kansas City Power and Light Company Report 25: Fuel Statistics
2. The Empire District Electric Company Fuel Report
3. Aquila Networks—L&P Monthly Production Statistics
4. Aquila Networks—MPS Monthly Production Statistics
5. AmerenUE—AmerenUE SB179 Fuel Report; and

(M) Any additional information ordered by the commission to be provided;

(N) To the extent any of the requested information outlined above is provided in response to one section, the provision of such information only needs to be provided once.

(6) Each electric utility with a RAM shall submit, with an affidavit attesting to the veracity of the information, a Surveillance Monitoring Report, which shall be treated as highly confidential, as required in 4 CSR 240-20.090(10) to the manager of the auditing department of the commission, OPC and others as provided in sections (9) through (11) in this rule. The submittal to the commission may be made through EFIS.

(A) There are five (5) parts to the electric utility Surveillance Monitoring Report. Each part, except Part one, Rate Base Quantifications, shall contain information for the last twelve (12)- month period and the last quarter data for total company electric operations and Missouri jurisdictional operations. Page one, Rate Base Quantifications shall contain only information for the ending date of the period being reported. The form of the Surveillance Monitoring Report form is included herein.

1. Rate Base Quantifications Report. The quantification of rate base items on page one shall be consistent with the methods or procedures used in the most recent rate proceeding unless otherwise specified. The report shall consist of specific rate base quantifications of:

- 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. Any other item included in the utility's rate base in the most recent rate proceeding;
- L. Net Operating Income from page three; and
- M. Calculation of the overall return on rate base.

2. Capitalization Quantifications Report. Page two shall consist of specific capitalization quantifications of:

- 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. Income Statement. Page three shall consist of an income statement containing specific quantification of:

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

- B. Operating and maintenance expenses for fuel expense, production expenses, purchased power energy and capacity;
- C. Transmission expenses;
- D. Distribution expenses;
- E. Customer accounts expenses;
- F. Customer service and information expenses;
- G. Sales expenses;
- H. Administrative and general expenses;
- 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, actual and normal;

4. Jurisdictional Allocation Factor Report. Page four shall consist of a listing of jurisdictional allocation factors for the rate base, capitalization quantification reports and income statement.

5. Financial Data Notes. Page five shall consist of notes to 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. Material variances between current twelve (12)-month period and prior twelve (12)-month period revenue;
- D. Expense level of items ordered by the commission to be tracked pursuant to the order establishing the RAM;
- E. Budgeted capital projects; and
- F. Events that materially affect debt or equity surveillance components.

(B) The Surveillance Monitoring Report shall contain any additional information ordered by the commission to be provided.

(C) The electric utility shall annually submit its approved budget, in electronic form, based upon its budget year in a format similar to Surveillance Monitoring Report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget shall be submitted within thirty (30) days of its approval 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 highly confidential.

(7) When an electric utility files tariff schedules to adjust an FAC rate as described in 4 CSR 240-20.090(4) with the commission, and served upon parties as provided in sections (9) through (11) in this rule, the tariff schedule must be accompanied by supporting testimony, and at least the following supporting information:

(A) The following information shall be included with the filing:

- 1. For the period from which historical costs are used to adjust the FAC rate:

- A. Energy sales in kilowatt-hours by rate class and voltage level;

B. Fuel costs by fuel type and generating facility by fuel type included in fuel and purchased power costs in the FAC rate and the base rates; and

C. Purchased power costs included in fuel and purchased power costs with costs differentiated by:

(I) Short-term and long-term purchased power contracts, where long-term is defined as contracts with terms greater than one (1) year;

(II) On-peak and off-peak costs; and

(III) Demand and energy costs, separately stated;

D. Market purchased megawatt-hours and costs included in fuel and purchased power costs;

E. Revenues from, expenses associated with and megawatt-hours from off-system sales;

F. 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;

G. Base rate component of fuel and purchased power costs and revenues from off-system sales; and

H. Any additional requirements ordered by the commission;

2. Calculation of the proposed FAC collection rates;

3. Calculations supporting the voltage differentiation of the FAC collection rates, if any, to account for differences in line losses by voltage level of service; and

4. Calculations underlying any seasonal variation in the FAC collection rates; and

(B) Workpapers supporting all items in subsection (A) shall be submitted to the commission, and served upon parties as provided in sections (9) through (11) in this rule. This submittal to the commission may be made through EFIS.

(8) When an electric utility that has a RAM files its application containing its annual true-up with the commission, as described in 4 CSR 240-20.090(5), any rate schedule filing must be accompanied by supporting testimony, and the electric utility shall:

(A) File the following information with the commission and serve upon parties as provided in sections (9) through (11) in this rule:

1. Amount of costs that it has over-collected or under-collected through the RAM by rate class and voltage level;

2. Proposed adjustments or refunds by rate class and voltage level;

3. Electric utility's short-term borrowing rate; and

4. Any additional information ordered by the commission; and

(B) Submit the following information to the commission and served upon the parties as provided in sections (9) through (11) in this rule. This submittal to the commission may be made through EFIS.

1. Workpapers detailing how the determination of the over-collection or under-collection of costs through the RAM was made including any model inputs and outputs and the derivation of any model inputs;

2. Workpapers detailing the proposed adjustments or refunds;

3. Basis for the electric utility's short-term borrowing rate; and

4. Any additional information ordered by the commission to be provided.

(9) Providing to other parties items required to be filed or submitted in preceding sections (3) through (8). Information required to be filed with the commission or submitted to the manager of the auditing department of the commission and to OPC in sections (3) through (8) shall also be, in the same format, served on or submitted to any party to the related general rate proceeding in which the RAM was approved by the commission, periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM, pursuant to the provisions of a commission protective order, unless the commission's protective order specifically provides otherwise relating to these sections of the commission's rule on RAMs.

(10) Party status and providing to other parties affidavits, testimony, information, reports and workpapers in related proceedings subsequent to general rate proceeding establishing RAM.

(A) A person or entity granted intervention in a general rate proceeding in which a RAM is approved by the commission, shall be a party to any subsequent related periodic rate adjustment proceeding, annual true-up or prudence review, without the necessity of applying to the commission 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. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM shall be served on or submitted to all parties from the prior related general rate proceeding and on all parties from any subsequent related periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM, concurrently with filing the same with the commission or submitting the same to the manager of the auditing department of the commission and OPC, pursuant to the provisions of a commission protective order, unless the commission's protective order specifically provides otherwise relating to these materials.

(B) A person or entity not a party to the general rate proceeding in which a RAM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic rate adjustment proceeding, annual true-up, or prudence review, or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent general rate case to modify, extend or discontinue the same RAM. If no party to a subsequent periodic rate adjustment proceeding, annual true-up, or prudence review, objects within ten (10) days of the filing of an application for intervention, the applicant shall be deemed as having been granted intervention without a specific commission order granting intervention, 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.

(11) Issuance of Protective Orders and Discovery.

(A) In each general rate proceeding where the commission may approve, modify, or reject a RAM, and each general rate case where the commission may authorize the modification, extension, or discontinuance of a RAM, the electric utility or the complainant, depending upon which entity initiates the case, shall file a motion for commission issuance of a protective order. The protective order shall, among other things, provide that the results of discovery may be used in any subsequent periodic rate adjustment proceeding, annual true-up, or prudence review without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the prior proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

(B) The commission shall establish a new case for each mutually exclusive twelve (12)-month period encompassing an annual true-up, prudence review and possible periodic rate adjustments, upon the filing of the first pleading or rate schedule respecting such annual true-up, prudence review or periodic rate adjustments, and shall issue a new protective order, pursuant to 4 CSR 240-2.085, to apply in the proceeding without the necessity of any party applying for a protective order. This new protective order shall be identical to the protective order in the immediately preceding related case, unless the electric utility or other party files and serves upon the parties in the immediately preceding related case, at least thirty (30) days prior to the filing of the first pleading or rate schedule respecting the annual true-up, prudence review and possible periodic rate adjustments, encompassing an appropriate twelve (12)-month period, a proposed new protective order for commission consideration. If the commission does not rule on the request for a proposed new protective order by the time that information sought to be protected is provided to another party or filed with the commission, the information shall be provided or filed at the level of protection designated by the providing or filing party.

(C) If an electric utility or other party files for a new protective order less than thirty (30) days prior to the filing of the first pleading or rate schedule respecting an annual true-up, prudence review or possible periodic rate adjustments, encompassing an appropriate twelve (12)-month period, the commission shall initially issue a protective order identical to the protective order in the immediately preceding related case to be in effect while the commission considers responses and decides whether the new protective order proposed by the electric utility or other party shall be adopted for any additional material to be disclosed by parties in the proceeding in question.

(D) Subsequent protective orders shall authorize use of the results of discovery from any preceding proceeding relating to the same RAM, without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the earlier proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

(12) Supplementing and updating data requests in subsequent related proceedings. If a party which submitted data requests relating to a proposed RAM in the general rate proceeding where the RAM was established or in the general rate proceeding where the same RAM was modified or extended, or in any subsequent related periodic rate adjustment proceeding, annual true-up, or prudence review, wants the responding party to whom the prior data requests were submitted to supplement or update that responding party's prior responses for possible use in a subsequent related periodic rate adjustment proceeding, annual true-up, prudence review or general rate case to modify, extend or discontinue the same RAM, the party which previously submitted the data requests shall submit an additional data request to the responding party to whom the data requests were previously submitted which clearly identifies the particular data requests to be supplemented or updated and the particular period to be covered by the updated response. A responding party to a request to supplement or update shall supplement or update a data request response, from a related general rate proceeding where a RAM was established, a general rate case where the same RAM was modified or extended, or a related periodic rate adjustment proceeding, annual true-up, or prudence review that the responding party has learned or subsequently learns is in some material respect incomplete or incorrect.

(13) Separate cases for each general rate proceeding involving a RAM and for each mutually exclusive twelve (12)-month annual true-up period of a RAM. Each general rate proceeding where the commission may approve, modify, or reject a RAM; each general rate case where the commission may authorize the modification, extension, or discontinuance of a RAM; and each mutually exclusive twelve (12)-month period of a RAM that encompasses an annual true-up, prudence review, and possible periodic rate adjustments shall comprise a separate case.

(14) For the purposes of this rule, a RAM (even if continued in substantially the form approved in the previous general rate proceeding) shall be considered to be a new distinct RAM after each general rate proceeding required by section 386.266.4(3), RSMo or if it were modified or extended in a general rate case.

(15) 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.

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

(17) 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.