BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Rules 4 CSR 240-3.162 and 4 CSR 240-20.091, Environmental Cost Recovery Mechanisms	)))	Case No. EX-2008-0105

REPLY COMMENTS OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

Comes now the Missouri Industrial Energy Consumers (MIEC) and submits the following reply comments on the Commission's proposed rules 4 CSR 240-3.162 and 4 CSR 240-2.091 concerning environmental cost recovery mechanisms (ECRMs).

Safeguards for Consumers

In its opening comments, MIEC expressed concern about the lack of appropriate safeguards in the proposed rules. In particular, MIEC noted that there were no provisions in the proposed rules which would address a situation in which a utility, having had a general rate case and put into effect an environmental rider, subsequently was able to earn in excess of the authorized return on equity that was used to establish its base rates.

OPC expressed similar concerns, and has offered specific language changes to the rules that would address this circumstance. MIEC appreciates the efforts of OPC to develop these important safeguards and MIEC fully endorses the changes to the rules that OPC has proposed.

Utilities Want Even More

The Missouri Energy Development Association, or MEDA (with supporting comments by AmerenUE and Kansas City Power & Light Company) want to make major changes to the proposed rules. Essentially, the utilities want to deny customers the benefit of decreases in capital-related costs for environmental-related investments that are in rate base (and recovered in rates) at the time the cost recovery mechanism is established. They seek to do this by redefining

environmental costs to include only the expenses (which they refer to as non-capital environmental costs) included in base rates at the time the ECRM is established. Under this proposal, the ECRM would capture any and all increases in capital-related costs for new investment (and the related expenses) plus any subsequent increases or decreases, and adjust for changes in the expenses included in base rates. As a result, customers would be denied the benefit of the buildup of depreciation and deferred tax reserves on pre-existing capital-related environmental investments that decrease rate base and associated revenue requirements.

The utilities make two lines of argument. First, they argue that the proposed rules would be "difficult" and "contentious" to implement. Second, they argue that the proposed rules would operate differently than the existing ISRS, and allegedly different from the procedures in other selected states.

With respect to the "difficult" and "controversial" argument, MIEC would point out that the utilities have not had any problem with "difficult" and "controversial" adjustments or proposals when they produce higher revenue requirements. It is only necessary to reflect on the kinds of proposals that are discussed, analyzed and decided upon in rate cases to realize that this argument has absolutely no merit.

The second line of argument asks the Commission to ignore the plain language of SB 179. The utilities assert that costs are treated differently under other Missouri legislation not applicable to environmental expenditures, and under some undefined and unreferenced legislation in other states allegedly applying to environmental expenditures. SB 179 states in 386.266.2:

> Subject to the requirements of this section, any electrical, gas, or water corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule.

Clearly, the language of SB 179 does not limit the cost tracked in the ECRM just to a limited number of expenses and capital-related cost changes only for new investment. Had the intent been to impose such a limitation, the legislation clearly could have spelled that out. It did not, and utility arguments that some other piece of legislation, whether in Missouri or in another state, should take precedence over the plain language of SB 179 is completely without merit.[1]

The Commission should not adopt the changes proposed by the utilities.

Respectfully submitted,

BRYAN CAVE, LLP

By: /s/ Diana Vuylsteke
Diana M. Vuylsteke, # 42419
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2543
Facsimile: (314) 259-2020
E-mail:
dmvuylsteke@bryancave.com

Attorney for The Missouri Industrial Energy Consumers

[1]We would also note that in proposed Sections (4)(A) & (4)(B), the utilities propose that the changes in capital-related cost associated with the new investment that they want to include in the rider would recognize the buildup of accumulated depreciation, but conveniently would not recognize the deferred tax offset to rate base, thus further enriching the utilities at the expense of customers. (See pages 7 and 8 of the MEDA comments and page 13 of the AmerenUE comments.)