

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Amendment)	
To the Commission's Fuel Adjustment)	File No. EX-2016-0294
Clause Rules.)	

**PUBLIC COUNSEL'S COMMENTS ON PROPOSED AMENDMENT TO THE FUEL
ADJUSTMENT CLAUSE RULES**

Public Counsel requests that the Missouri Public Service Commission adopt and consider Public Counsel's comments related to the Commission's proposed amendments to the fuel adjustment clause (FAC) rule 4 CSR 240-20.090 *Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms*.

Public Counsel provides several documents for this Commission's consideration in addition to this pleading. First, Public Counsel provides as Attachment A which is a detailed set of comments recommending various changes to the Commission's proposed amendments to the FAC rule. These comments offer reasoned revisions for this Commission's consideration. Public Counsel also provides as Attachment B a whitepaper created by Public Counsel's expert witness Ms. Lena M. Mantle, who helped draft the original FAC rule and has extensive experience with the history and current operation of the FAC mechanism in Missouri. Ms. Mantle's whitepaper provides a general description of the history of the recovery of fuel and purchased power costs by investor-owned electric utilities in Missouri prior to and after the passage of Section 386.266 Revised Missouri Statutes ("RSMo") in 2005.¹ Her whitepaper also provides an understanding of the functionality of the FACs currently implemented throughout the state of Missouri. Finally, Public Counsel has attached as Attachment C regulations relating to the definition of fuel costs as

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.
http://www.senate.mo.gov/05info/BTS_Web/Actions.aspx?SessionType=R&BillID=5755

described by Federal Energy Regulatory Commission (FERC) and published at 18 CFR Part 35.14 (Effective Nov. 3, 2008). Public Counsel is recommending that the Commission adopt FERC's definition of fuel costs, and consequently, Public Counsel has attached a copy 18 CFR Part 35.14.

Although Public Counsel encourages this Commission to thoroughly review each of our comments and attachments, Public Counsel urges the Commission to pay special attention to the following areas:

- the minimum criteria provided in the rule for Commission consideration when evaluating whether to establish, continue, modify or discontinue an FAC,
- the need for a requirement for periodic heat rate testing that measures the efficiency of electric generating units,
- the need to clarify the timing of and the legal standard for a prudence review,
- the need for tying detailed resource planning to fuel costs, purchased power costs, and fuel-related revenue included in FACs, and
- the need to change the timeline for data requests related to reviewing true-up and FAR filings.

Concerning the minimum criteria the Commission should use to evaluate whether to establish, continue, or modify a RAM, the Commission should revise the amended FAC rule, at 4 CSR 240-20.090(2)(C), by borrowing language from its ER-2014-0370 Report and Order. In addition, our revisions offer robust criteria that balances ratepayer and utility interests. The statute that enables the Commission to approve the establishment, modification or rejection of a FAC includes many customer protections such as requirements for periodic prudence reviews and filing of general rate cases at least every four years. It is therefore appropriate for the Commission to

balance the interest of both the Companies and the ratepayers. Public Counsel has provided its detailed recommendation for inclusion in the amended rule in our attached comments.

Concerning the need for periodic heat rate testing, this Commission should continue to ensure the regulated industry conduct periodic heat rate tests because these heat rate tests continue to be an important measure of mechanical efficiency of generating units. The proposed rule does not require the regulated industry to administer *periodic* heat rate tests. It is important to carry out and keep records of heat rate tests conducted within the twenty-four month period preceding the filing of the utility's general rate increase case. In the initial FAC rule making order in EX-2006-0472, the Commission said about heat rate tests the following:

COMMENT: Commenters assert that minimum equipment performance standards are needed to encourage efficient operations and maintenance and avoid the automatic pass through of extraordinary insured or controllable costs (such costs are not caused by fuel price changes in any event). The PSC Staff agrees that equipment performance standards should be a part of these rules and has included in the proposed rules requirements to develop generating unit efficiency testing and monitoring procedures. Staff will, as a result of receiving this data, have the ability to monitor each electric utilities' power plants in terms of their capability to efficiently convert fuel to electricity. Any observed reductions over time may be an indication of the utility's need to implement programs to improve efficiency. Staff views this as a very important and necessary detail since the efficiency of each electric utility's power plants directly relates to each electric utility's fuel and purchased power costs.

RESPONSE: The Commission finds the comment and the Staffs resolution to be reasonable, requiring no further action.

The Commission's proposed language (4 CSR 240-20.090(2)(A)18) regarding the requirement for efficiency testing could result in companies no longer conducting periodic heat rate tests in that it does not include a requirement for heat rate testing to be regularly conducted. It merely requires the provision of the results of the last heat rate tests. Public Counsel's proposed language continues the Commission's current requirement for periodic heat rate testing and attempts to resolve some

confusion that has occurred in the past regarding the timing of the heat rate tests with respect to the filing of general rate increase cases.

Related to prudence reviews, Public Counsel recommends that the Commission add clarifying language to highlight the timing of prudence reviews in 4 CSR 240-20.090(11). Public Counsel makes this recommendation because, in EO-2017-0065, the Commission's Staff argued the prudence of the utility's incurred costs would be reserved for a rate case instead of during a FAC prudence review.² However, section 386.266.4(4), RSMo, requires the Commission to review incurred costs through periodic prudence reviews. Public Counsel has proposed language that will provide clarification in the Staff recommendation regarding whether costs and revenues were reviewed in a recent general rate case or the Staff's prudence audit.

With respect to the prudence standard employed, this Commission has employed a "reasonable person" standard in past prudence reviews. *State ex rel. Associated Natural Gas Co. v. P.S.C.*, 954 S.W.2d 520 (Mo. App. 1997). Under the standard, a utility's "conduct should be judged by asking whether the conduct was reasonable at the time under all circumstances, considering the company had to solve its problem prospectively rather than in reliance on hindsight." *Id.* The Commission should codify the "reasonable person" standard to avoid confusion on the responsibilities and burdens in a prudence review. Attachment A includes Public Counsel's recommendation in 4 CSR 240-20.090(11) to avoid this confusion.

Related to resource planning, the Commission should require the utility to identify and provide a status update on their Chapter 22 resource planning filings. Decisions are made in the resource planning process that effect the fuel and purchase power cost for twenty to sixty years.

² EO-2017-0065, In the Matter of the Sixth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of the Empire District Electric Company, Staff's Initial Brief, Pg. 2; Also see, EO-2017-0065, Transcript, Pg. 260, Lines 2-8

Therefore, it is important for companies to have a robust planning process. Because resource planning cases are long and confusing, Public Counsel recommends an amendment to 4 CSR 240-20.090(2)(A)19 requiring electric utilities to provide a status update, including that the utility list any actual or alleged resource planning deficiencies and explain how those deficiencies impact fuel costs, impact purchased power costs, and impact fuel-related revenue over the time period until the next general rate case and throughout the horizon of the resource plan.

Related to the timeline for data requests for reviewing true-up and FAR filings, Public Counsel offers that the Commission revise the rule to require the utility to respond to data request in ten calendar days instead of 20 days. This change would appear at 4 CSR 240-20.090(8)(H), and (9)(D), which currently only allows Public Counsel to file a response within forty days of the electric utility FAC rate change and true-up filings. If parties only have 30 or 40 days to make recommendations, then those parties need to obtain discovery in a quicker timeframe. Public Counsel believes 10 calendar days is a reasonable recommendation in this circumstance.

WHEREFORE, for the foregoing reasons, Public Counsel requests that the Commission adopt the comments and recommendations provided herein.

Respectfully submitted,

/s/ Ryan Smith

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**ATTORNEY FOR THE OFFICE
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on August 6, 2018 to all counsel of record.

/s/ Ryan D. Smith

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission Chapter 20—Electric Utilities**

PROPOSED AMENDMENT

4 CSR 240-20.090 [Electric Utility] Fuel and Purchased Power [Cost Recovery] Rate Adjustment Mechanisms. The commission is amending and revising all sections of this rule to consolidate the filing requirements for applications for fuel adjustment clauses to be established, continued, or modified.

PURPOSE: This proposed amendment modifies the definitions, structure, operation, and procedures relevant to the filing and processing of applications to allow fuel and purchased power costs and fuel-related revenues in an interim energy charge or a fuel adjustment clause. The interim energy charge is established in a general rate proceeding, while the fuel adjustment clause allows periodic rate adjustments outside general rate proceedings.

(1) [Definitions. As used in this rule, the following terms mean as follows:] **The following subsections define various terms as used in this rule:**

(A) Accumulation period means the time period set by the commission in the general rate proceeding over which historical fuel and purchased power costs and fuel-related revenues are accumulated for purposes of determining the actual net energy costs (ANEC). An accumulation period may be a time period between three (3) and twelve (12) months with the timing and number of accumulation periods to be determined in the general rate proceeding establishing, continuing, or modifying the FAC;

(B) Actual net energy costs (ANEC) means prudently incurred fuel and purchased power costs minus fuel-related revenues of a rate adjustment mechanism (RAM) during the accumulation period;

(C) Base energy costs means the fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case;

(D) Base factor (BF) means the base energy costs per kilowatt hour (kWh) measured at the regional transmission organization's applicable price node for the electric utility's load or, if the electric utility is not a participant in a regional transmission organization, at the generator. The base factor(s) shall be established in a general rate proceeding and may vary by season of the year;

(E) Base rates means the tariffed rates that do not change between general rate proceedings;

~~/(A)/(F)~~ Electric utility or utility means electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo;

(G) EFIS means the electronic filing and information system of the commission;

(H) FAC charge means the positive or negative dollar amount on each utility customer's bill, which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment (FPA) amount;

(I) Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding which is designed to recover from or return to customers the fuel and purchased power adjustment (FPA) amounts through periodic changes to the fuel adjustment rates made outside a general rate proceeding;

(J) Fuel adjustment rate (FAR) means the rate used to determine the FAC charge on each utility customer's bill during a recovery period of a FAC. The FAR shall be designed to recover from or return to customers the recovery period FPA. The FAR may be positive or negative;

Commented [OPC1]: Sets rate design. Propose instead: "Base factor (BF) means base energy costs rate(s) which is established in a general rate proceeding, which may vary within a year, and which are included in the utility's fuel adjustment clause (FAC);"

If this remains unchanged, then other parts of the rule need to be changed to match the base factor definition. It also may be incorrect given different ways utilities' current FACs operate. If you define base factor as proposed by OPC, then no further changes would need to be made in the rule.

Commented [OPC2]: For clarification, end sentence with period after "proceedings." Then, add: "Base rates shall be designed to recover the FAC costs and revenues and the non-FAC costs and revenues as determined by the commission in the general rate proceeding."

Commented [OPC3]: Because of a change OPC recommends at (2)(A)19, OPC recommends adding a definition for Chapter 22 as follows:
"Chapter 22 filings mean an electric utility's most recent 4 CSR 240-22 Electric Utility Resource Planning triennial compliance filing and most recent annual update report to that triennial compliance filing, if any, to which staff and other parties to the utility's resource planning case have filed their reports or comments;"

(K) Fuel and purchased power adjustment (FPA) means the dollar amount intended to be recovered from or returned to customers during a given recovery period of a FAC. The FPA may be positive or negative. It includes:

1. The difference between the ANEC and NBEC during the corresponding accumulation period taking into account any incentive ordered by the commission;
2. True-up amount(s) ordered by the commission prior to or on the same day as commission approval of the FAR adjustment;
3. Interest on the FPA, true-up amount, and any prudence adjustment;
4. Prudence adjustment(s) ordered by the commission since the last FAR adjustment; and
5. Any other adjustment ordered by the commission;

[(B)](L) 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 costs shall 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;

(C) 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;]

2. Fuel and purchased power costs do not include environmental costs as defined in 4 CSR 240-20.091(1) or renewable energy standard compliance costs as defined in 4 CSR 240-20.100(1);

(M) Fuel-related revenues means those revenues related to the generation, sale, or purchase of energy. Fuel-related revenues may include, but are not limited to, off-system sales, emission allowance sales, and renewable energy credits or certificates whenever such renewable energy credits or certificates are not included in a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) in compliance with 4 CSR 240-20.100;

[(D)](N) 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;

[(E) Initial RAM rules means the rules first adopted by the commission to implement Senate Bill 179 of the Laws of Missouri 2005;]

(O) Interest means monthly interest at the utility's short term borrowing rate to accurately and appropriately remedy any over- or under-billing during a recovery period, true-up, or any commission ordered refund of imprudently incurred costs;

[(F)](P) Interim energy charge (IEC) means [a refundable fixed charge,] a mechanism that includes a refundable fixed amount billed through an interim energy rate (IER) 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 the fuel and purchased power costs included in 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;] Base energy cost in the base rates is the floor of the IEC. The base energy cost plus the fuel and purchased power costs billed through the IER is the ceiling of the IEC. An IEC may or may not include fuel-related revenues and costs related to those revenues;

(Q) Megawatt hour (MWh) is one (1) million watt hours or one thousand (1,000) kilowatt hours (kWh);

(R) MCF is one thousand (1,000) cubic feet of natural gas;

Commented [OPC4]: Not sure what "costs during the corresponding accumulation period" means. The word "of" makes more sense instead of "during." Another option could be to add the word "incurred" in front of the word "during."

Commented [OPC5]: OPC recommends defining fuel in a manner consistent with the FERC FAC requirements. OPC recommends, "Fuel costs mean the fuel costs as described by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR Part 35.14 (Effective Nov. 3, 2008)."

Commented [OPC6]: OPC recommends defining purchased power costs as follows: "Purchased power costs means the cost of energy or short-term capacity purchased through a contract or from a Regional Transmission Organization (RTO) to meet load requirements or make off-system sales. Purchased power costs also include the transmission costs necessary to make such purchases."

Commented [OPC7]: Eliminate this sentence. The inclusion of hedging costs should be determined on a case-by-case basis. Statute does not state anything about hedging. Parties should be allowed to argue whether hedging costs are appropriate in a RAM.

Commented [OPC8]: To include transmission costs, OPC proposes: "Fuel-related revenues means those revenues related to the sale of energy either through contracts or the RTO, either generated or purchased, net of the cost of transmission associated with such sale."

Commented [OPC9]: Need definition of MW. OPC proposes: "MW is one million (1,000,000) watts."

Commented [OPC10]: For consistency OPC proposes: "MWh is one million (1,000,000) watt-hours or one thousand (1,000) kilowatt hours (kWh);"

Also, when referring to a Megawatt hour, it should be "MWh" because "mWh" means milli-watt hour

Commented [OPC11]: OPC proposes replace "one (1) million" with "one million (1,000,000)"

(S) MMBtu is equal to one (1) million Btus;

(T) Net base energy costs (NBECE) means the product of the utility's base factor (BF) times the kWh measured at the regional transmission organization's price node for the electric utility's load or, if the electric utility is not a participant in a regional transmission organization at the generator, for the accumulation period;

(U) Other parties means any party to the applicant's most recent general rate proceeding in which the RAM at issue was established, continued, or modified;

[(G)](V) Rate adjustment mechanism (RAM) refers to either a commission-approved fuel adjustment clause (FAC) or a commission-approved interim energy charge (IEC);

(W) Rebase base energy costs means the resetting of the base energy cost in each general rate proceeding in which the FAC is continued or modified;

(X) Recovery period means the period over which the FAR is applied to retail customer usage on a per kilowatt-hour (kWh) basis in an effort to recover the FPA. A recovery period is determined in a general rate case and shall not be longer than twelve

(12) billing months;

[(H)](Y) Staff means the staff of the Public Service Commission; and

[(I)] 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.]

(Z) True-up amount means—

1. For a FAC, the true-up amount shall be the difference between the FPA and the utility's aggregate FAC charges billed for a recovery period. If the aggregate FAC charges billed for recovery period are more than the FPA, the true-up amount will be negative. If the aggregate FAC charges billed for a recovery period are less than the FPA, the true-up amount will be positive.

A. The electric utility may request in its general rate case to use the final Regional Transmission Organization (RTO) determinants to update the FPA for its true-up if the electric utility belongs to an RTO where the RTO may, after the beginning of the recovery period, finalize the determinants used to calculate the FPA for the recovery period.

2. For an IEC, the true-up amount shall be determined as follows for each consecutive twelve- (12-) month period—

A. If the actual fuel and purchased power cost is greater than the IEC ceiling, the true-up amount shall be zero;

B. If the actual fuel and purchased power cost is less than the IEC ceiling and greater than the IEC floor, the true-up amount shall be the difference between the actual fuel and purchased power cost and the combined IEC billed plus the base energy cost. The customers will be credited/refunded this amount; or

C. If the actual fuel and purchased power cost is less than the IEC floor, the true-up amount shall be the aggregate IEC billed. The customers will be credited/refunded this amount.

(2) [Applications to Establish, Continue or Modify a RAM. Pursuant to the provisions of this rule, 4 CSR 240-2.060 and section 386.266, RSMo, only] Establishment, Continuance, or Modification of a RAM. [a]An electric utility may only file a request with the commission to establish, continue, or modify a RAM in a general rate proceeding [may file an application with the commission to establish, continue or modify a RAM by filing tariff schedules]. Any party in a general rate proceeding [in which a RAM is effective or proposed] may seek to continue, modify, or oppose the RAM. The commission shall approve, modify, or reject such [applications to establish a RAM] request only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that may affect the costs or overall rates and charges of the petitioning electric utility.

[(A)] The commission may approve the establishment, continuation or modification of a RAM and associated rate schedules provided that it finds that the RAM it approves is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity and so long as the rate schedules that implement the RAM conform to the RAM approved by the commission.

[(B)] The commission may take into account any change in business risk to the utility resulting from establishment, continuation or modification of the 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.

[(C)] In determining which cost components to include in a RAM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the

Commented [OPC12]: Delete to be consistent with MWh and MCF definitions. OPC proposes: MMBtu is one million (1,000,000) Btus;"

Commented [OPC13]: Sets rate design of RAM. Propose instead: "Net base energy costs means the fuel and purchased power costs net of fuel-related revenues billed during the accumulation period in base rates;"

Commented [OPC14]: Sets rate design. Propose instead: "Recovery period means the period over which the FAR is applied to retail customers' bill to recover the FPA. A recovery period is determined in the general rate case and shall not be longer than twelve (12) billing months;"

costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component. The commission may, in its discretion, determine what portion of prudently incurred fuel and purchased power costs may be recovered in a RAM and what portion shall be recovered in base rates.

(D) The electric utility shall include in its initial notice to customers regarding the general rate case, a commission approved description of how the costs passed through the proposed RAM requested shall be applied to monthly bills.]

(A) The electric utility shall file the following supporting information, in electronic format where available (with formulas intact), as part of, or in addition to, its direct testimony:

1. An example of the notice to be provided to customers to be approved by the commission. The notice shall include a description of how its proposed RAM shall be applied to monthly bills, the electric utility's estimate of the amount of the proposed change in rates arising from changes in the base energy costs, and the estimated impact on a typical residential customer's bill resulting from the proposed change to the base energy costs;

2. An example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills in accordance with section (12);

3. Proposed RAM tariff sheets;

4. A detailed description of the design and intended operation of the proposed RAM;

5. A detailed explanation of how the proposed RAM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

6. A detailed explanation of how the proposed FAC shall be trued-up for over-and under-billing, or how and when the refundable portion of the proposed IEC shall be trued-up;

7. A detailed description of how the electric utility's monthly short-term interest rate will be defined and how it will be applied, during the accumulation period and the recovery period, to true-up amounts and prudence disallowances;

8. A detailed description of how the proposed RAM is compatible with the requirement for prudence reviews;

9. In order for the commission to make the determination in subsection (C), a detailed explanation of each fuel and purchased power cost type and fuel-related revenue type that is to be recovered under the proposed RAM including, but not limited to—

A. Why the cost or revenue type should be included in the RAM;

B. The cost incurred or revenue received by the electric utility's proposed test year;

C. The annual expected magnitude of the cost or revenue for the next four (4) years;

D. A measure of volatility and the reason for the volatility of the cost or revenue type;

E. The uncertainty surrounding the cost or revenue type and the reason for the uncertainty;

F. An explanation of how the electric utility manages the cost or revenue type; and

G. The specific account or any other designation ordered by the commission where the cost or revenue type will be recorded on the electric utility's books and records;

10. A detailed explanation of the fuel-related revenues that are to be considered in determining the amount to be recovered under the proposed RAM with identification of the specific account and any other designation ordered by the commission where that revenue will be recorded on the electric utility's books and records;

11. A detailed explanation of any incentive feature in the proposed RAM with the expected benefit and cost each feature is intended to produce for both the electric utility and its Missouri retail customers;

12. A detailed explanation of any rate volatility mitigation feature in the proposed RAM;

Commented [OPC15]: OPC proposes: "customer bill for each rate class"

Commented [OPC16]: Change to "prudence reviews in section (11)." Helps navigate the rules.

Commented [OPC17]: Change the word "recovered under" to "included in." This reads as if the RAM would always be recovering costs and never returning revenue collected above costs.

Commented [OPC18]: OPC proposes for clarity: "What characteristics of the cost or revenue make it suitable for inclusion in the RAM"

Commented [OPC19]: OPC proposes for clarity: "utility in its proposed"

Commented [OPC20]: This is in the case filing to establish, modify or discontinue. The Commission has not ordered any other designation at this point. Therefore OPC proposes this to be changed to "The specific account and sub-account". All the utilities have subaccounts.

Commented [OPC21]: Not necessary because revenues are included in 9.

13. A detailed explanation of any feature of the proposed RAM and any existing electric utility policy, procedure, or practice that ensures only prudent fuel and purchased power costs and fuel-related revenue shall be recovered through the proposed RAM, including, but not limited to, competitive bidding practices;

14. If the proposed RAM includes incorporating fuel and purchased power costs and fuel-related revenue in the electric utility's base rates, a detailed explanation of the methodology used to allocate fuel and purchased power costs and fuel-related revenue to specific customer classes in the base rates and in any subsequent rate adjustments during the term of the proposed RAM;

15. A detailed explanation of the rate design of the RAM for each customer class, including at a minimum the electric utility's justification for the methodology chosen for determining the rate design and how that methodology is consistent with the methodology used to allocate fuel costs, purchased power costs, and fuel-related revenue in base rates;

16. A detailed explanation of any change to the electric utility's business risk resulting from implementation of the proposed RAM, in addition to any other changes in business risk the electric utility may experience;

17. A detailed explanation of any risk to each of the electric utility's Missouri retail customer classes resulting from implementation of the proposed RAM, including the electric utility's estimated quantification of any risk and how the electric utility will manage that risk;

Commented [OPC22]: Need the following information if an Interim Energy Charge (IEC), which is provided for by statute, is proposed:

-“If the electric utility is proposing an IEC, a detailed and complete explanation of the methodology used to determine the base and ceiling of the IEC;”

-“If the electric utility is proposing an IEC, a detailed and complete explanation of the methodology used to allocate fuel and purchased power costs and fuel-related revenue to specific customer classes in the base of the IEC, and how any subsequent refunds or credits to the customer classes will be allocated;”

-If the electric utility is proposing an IEC, a detailed and complete explanation of how any subsequent refunds or credits will be provided to customers;

Commented [OPC23]: If IEC requirements above are added, then the word “RAM” should be changed to “FAC”

Commented [OPC24]: Not needed if rate design (i.e., \$/kWh) is required by this rule in other sections.

However, OPC recommends rate design not be set by rule but determined in each case. Therefore this would be needed.

Commented [OPC25]: “Any” makes it sound like there is no risk to customers. Propose removing “any” from this requirement.

18. A copy of the results of heat rate tests and/or efficiency tests that were conducted on each of the electric utility's steam generators, including nuclear steam generators, heat recovery steam generators, steam turbines, and combustion turbines for the electric utility's general rate proceeding proposing to establish, continue, or modify the RAM. The electric utility may, in lieu of filing the foregoing results with the commission, provide the results to staff, Office of the Public Counsel (OPC), and other parties as part of the workpapers it provides in connection with its direct case filing. If the electric utility submits the heat rate tests and/or efficiency tests in workpapers, it will provide a statement in its testimony as to where the results can be found in workpapers;

19. Information that shows that the electric utility has in place a long-term resource planning process;

20. If the electric utility proposes to include emissions allowances costs or sales revenue in the proposed FAC and not in an environmental cost recovery mechanism, a detailed explanation of its emissions management policy, and its forecasted environmental investments, emissions allowances purchases, and emissions allowances sales;

21. For each power generating unit the electric utility owns or controls, in whole or in part, the electric utility shall file graphs, accompanied by the data supporting the graphs, for each month over the immediately preceding five (5) years, showing the monthly equivalent availability factor, the monthly equivalent forced outage rate, and the length and timing of each planned outage of that unit; and

Commented [OPC26]: This doesn't require heat rate tests. Doesn't set timetable with frequencies for heat rate testing.

Replace with: "A level of efficiency for each of the electric utility's generating units determined by the results of heat rate tests and/or efficiency tests that were conducted on each of the electric utility's steam generators, including nuclear steam generators, heat recovery steam generators, steam turbines and combustion turbines within twenty-four (24) months preceding the filing of the general rate increase case.

- A. The results of the heat rate tests should be filed in a table format by generating unit type, rated megawatt (MW) output rating, the numerical value of the latest heat rate test and the date of the latest heat rate test;
- B. The electric utility shall provide documentation of the actual heat rate test procedures. The electric utility may, in lieu of filing the documentation of these procedures with the commission, provide them to the staff, OPC, and to other parties as part of the workpapers it provides in connection with its direct case filing. If the electric utility submits the heat rate tests and/or efficiency test in workpapers, it will provide a statement in its testimony as to where the results can be found in workpapers;"

Commented [OPC27]: Decisions are made in the resource planning process that effect the fuel and purchase power cost for twenty to sixty years. Therefore, it is important for companies to have a robust planning process. Because resource planning cases are long and confusing, Public Counsel recommends replacing with:

"19. The status and commission file number(s) of the electric utility's Chapter 22 filings.

A. If the commission found the electric utility's Chapter 22 filing to be less than fully compliant, the electric utility shall provide a list containing each resource planning deficiency and concern that was not resolved and an explanation of how that deficiency or concern impacts fuel costs, purchased power costs or fuel-related revenue in the time period until the electric utility files its next general rate proceeding and over the time horizon of the resource plan; and

B. If a commission decision on the electric utility's Chapter 22 filing is pending the electric utility shall provide a list of each alleged resource planning deficiency or concern, if any, and how it impacts fuel costs, purchased power costs and fuel-related revenue in the time period until the electric utility files its next general rate proceeding and over the time horizon of the resource plan."

With the case number, parties should be able to go back to the filing to get a better understanding of the utility's resource planning process.

22. Authorization for the staff to release to all parties to the general rate proceeding in which the establishment of a RAM is requested, the previous five (5) years of historical surveillance monitoring reports the electric utility submitted in EFIS.

(B) An electric utility filing for modification or continuance of a RAM in which the information required in subsection (2)(A) has been previously filed with the commission as part of a general rate proceeding and has not changed, may certify that the information has not changed, in lieu of providing copies of information, and provide to all parties the general rate case number and location in EFIS, including the EFIS item and page number where the information can be found. An electric utility filing to continue or modify a RAM must also provide to all parties any additional information the commission ordered the electric utility to provide when seeking to continue or modify its RAM.

Commented [OPC28]: Should be applicable for new parties in cases that continuation or modification is requested. OPC proposes: "establishment, continuation, or modification"

Commented [OPC29]: OPC does not agree with this because new parties may not be able to access old records and because it incents utilities to vaguely refer to filings without specificity. However if it is included then it should read:

(B) In lieu of providing copies of information, a party filing for modification or continuance of a RAM in which the information required in subsection (2)(A) has been previously filed with the commission as part of a general rate proceeding and has not changed in any manner, may certify that the information has not changed and provide to all parties the general rate case number and the location in EFIS, including the EFIS item and page number where the information can be found.

(C) An electric utility filing to continue or modify a RAM must also provide to all parties any additional information the commission ordered the electric utility to provide when seeking to continue or modify its RAM.

(C) The commission may approve the establishment, continuation, or modification of a RAM and associated tariff sheets provided that it finds that the RAM is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity and so long as the tariff sheets that implement the RAM conform to the RAM approved by the commission. The commission may consider, but is not limited to, considering—

1. Fuel and purchased power costs, fuel-related revenues that would flow through the RAM, or other factors it deems appropriate;

2. Any change in business risk of the utility resulting from establishment, continuation, or modification of the RAM in setting the electric utility's allowed return on equity in any general rate proceeding, in addition to any other changes in business risk experienced by the electric utility; and

3. In determining which fuel and purchased power cost types and fuel-related revenue types to include in a RAM, the commission may consider the magnitude of each cost or revenue type, the ability of the utility to manage each cost or revenue type, the volatility of each cost or revenue type and the incentive provided to the utility as a result of the inclusion or exclusion of each cost or revenue type. The commission may, in its discretion, determine what portion of prudently incurred fuel and purchased power costs and fuel-related revenues may be recovered in a RAM and what portion shall be recovered in base rates.

[(E)](D) Any party to the general rate proceeding may oppose [the establishment, continuation or modification of a] any RAM and/or may propose alternative RAMs for the commission's consideration [including but not limited to modifications to the electric utility's proposed RAM].

[(F)](E) The RAM, and [periodic adjustments thereto] any adjustments to the FARs if a FAC is approved, shall be based on historical fuel and purchased power costs and fuel-related revenues. [(G) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(2) in conjunction with an application to establish a RAM and 4 CSR 240-3.161(3) in conjunction with an application to continue or modify a RAM.]

(F) For an electric utility with a FAC, the utility shall include in its proposed tariff sheets provisions which shall accurately and appropriately remedy any true-up amount as part of the electric utility's determination of its FPA for a change to its FARs. The proposed tariff sheets shall include, at a minimum:

1. When the electric utility will file for a true-up;

2. How the true-up amount will be determined including, but not limited to, any recalculation of the FPA; and

3. How and when the true-up amount will be recovered. For an electric utility with an IEC mechanism, a true-up must be filed within sixteen (16) months of the operation of law date of the IEC and be filed annually thereafter.

[(H)](G) Any party to the general rate proceeding may propose a cap on the [change in the FAC, reasonably designed] periodic changes to the fuel adjustment rate (FAR), to mitigate volatility in rates, provided it proposes a method for the utility to recover all of the costs it would be entitled to recover in the FAC, together with interest thereon.

(3) [Application for Discontinuation of a RAM. The commission shall allow or require the rate schedules that define and implement a RAM to be discontinued and withdrawn only after providing the] Discontinuance of a RAM. The tariff sheets that define and implement a RAM shall only be discontinued and withdrawn after the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect ratepayers, the cost or overall rates, and charges of the petitioning electric utility.

(A) When an electric utility files a general rate proceeding in which it requests that its RAM be discontinued, the electric utility shall file with the commission, and serve on the parties, the following supporting information, in electronic format where available (with formulas intact), as part of, or in addition to, its direct testimony:

1. An example of the notice to be provided to customers regarding the general rate case to be approved by the commission, and a description of why it believes the RAM should be discontinued;

2. A detailed explanation of how the electric utility proposes to discontinue its RAM.

A. If requesting to discontinue its FAC, the electric utility shall include the following in its explanation:

(I) The ending date of the last FAC accumulation period;

(II) The beginning and ending dates of the recovery period for that accumulation period; and

(III) The procedure for the true-up associated with the recovery period for that accumulation period.

B. If requesting to discontinue its IEC, the electric utility shall include a detailed explanation of how any over-billing will be returned to the electric utility's retail customers;

3. A detailed explanation of why the RAM is no longer necessary to provide the electric utility a sufficient opportunity to earn a fair return on equity;

4. A detailed explanation of any impact on setting the electric utility's allowed return on equity in any rate proceeding as a result of the change to the electric utility's business risk resulting from discontinuation of its RAM, in addition to any other changes in business risk experienced by the electric utility;

Commented [OPC30]: Add a new subsection that requires a summary in its direct case of the review Staff conducted of the information provided.

OPC proposes: "() Staff shall submit in its direct case a summary of the result of its review of the information provided by the utility."

Commented [OPC31]: Add the phrase, "In its determination," prior to the line, "The Commission may consider . . ."

Commented [OPC32]: As explained in pleading, OPC replacing with: "1. A RAM is necessary to provide the electric utility with a sufficient opportunity to earn a fair return on equity which is measured by the following standards:

A. Past and expected changes in the costs and revenues proposed to be included in the RAM are substantial enough to have a material impact upon revenue requirement and the financial performance of the electric utility between rate cases;

B. Changes in the costs and revenues included are beyond the control of management, where utility management has little influence over experienced revenue or cost levels; and

C. The changes in cost and revenue types included are volatile in amount, causing significant swings in income and cash flows if not tracked."

In addition, OPC recommends the following factors:

"2. The RAM is not harmful to ratepayers which is measured by the following standards:

A. The RAM does not shift an inappropriate amount of risk regarding the electric utility's fuel and purchased power costs, including transportation, to the customers; and

B. It does not create significant swings in the bills of the customers; and

3. The RAM is in the public interest."

Commented [OPC33]: Not necessary with 3. Delete this, and add to the end of the first sentence of 3: "or other lawful factors".

Commented [OPC34]: OPC recommends eliminating this. If not, this should be another subsection.

Commented [OPC35]: OPC proposes replacing "with" with "requesting". This is in the section regarding the filing for establishing or modifying a RAM.

Commented [OPC36]: This is not done by all electric utilities. Proposed language: "How the true-up amount will be determined including, but not limited to, if the utility is requesting the Commission allow it to recalculate its FPA in its true-up process, how that recalculation will be done; and"

Commented [OPC37]: This should be a subsection (G)

5. Any additional information that the commission ordered the electric utility to provide when seeking to discontinue its RAM.

[(A)](B) Any party to the general rate proceeding may oppose the discontinuance of a RAM on the grounds that the utility is opportunistically discontinuing the RAM due to declining fuel or purchased power costs and/or increasing [off-system sales] **fuel-related** revenues. If the commission finds that the utility is opportunistically seeking to discontinue the RAM for any of these reasons, the commission shall not allow the RAM to be discontinued, and shall order its continuation or modification. **In addition to other remedies provided by law, the commission may reject the utility's request for discontinuance of a RAM if it finds that the utility has not complied with this rule in its request to discontinue its RAM.** [To continue or modify the RAM under such circumstances, the commission must find that it provides the electric utility with a sufficient opportunity to earn a fair rate of return on equity and the [rate schedules] **tariff sheets** filed to implement the RAM must conform to the RAM approved by the commission.] **Any RAM and periodic adjustments [thereto] to the FAR shall be based on historical fuel and purchased power costs.**

[(B)](C) The commission may take into account any change in business risk [to the corporation] **of the electric utility** resulting from discontinuance of the RAM in setting the electric utility's allowed return **on equity** in any **general** rate proceeding[,] in addition to any other changes in **the electric utility's** business risk [experienced by the electric utility].

[(C) The electric utility shall include in its initial notice to customers, regarding the general rate case, a commission approved description of why it believes the RAM should be discontinued.

(D) Subsections (2)(A) through (C), (F) and (G) shall apply to any proposal for continuation or modification.

(E) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(4).]

[(4) Periodic Adjustments of FACs. If an electric utility files proposed rate schedules to adjust its FAC rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.161 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the FAC is in accordance with the provisions of this rule, section 386.266, RSMo and the FAC mechanism established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty

(30) days after the electric utility files its tariff schedules to adjust its FAC rates. If the FAC rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the FAC rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the FAC rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the FAC mechanism established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within sixty (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) An electric utility with a FAC shall file one (1) mandatory adjustment to its FAC in each true-up year coinciding with the true-up of its FAC. It may also file up to three (3) additional adjustments to its FAC within a true-up year with the timing and number of such additional filings to be determined in the general rate proceeding establishing the FAC and in general rate proceedings thereafter.

(B) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section

(10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5) in order for the commission to process the electric utility's requested FAC adjustment increasing rates.

(C) If the staff, Office of the Public Counsel (OPC) or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes that the information required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM has not been submitted in compliance with that rule, it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff schedules to adjust the FAC rates and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was in compliance with the requirements of 4 CSR 240-3.161, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase FAC rates shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing timeline for the adjustment to increase FAC rates. For good cause shown the commission may further suspend this timeline. Any delay in providing sufficient information in compliance with 4 CSR 240-3.161 in a request to decrease

Commented [OPC38]: OPC proposes language balancing customer interest with utility's ability to earn ROE.

Proposed language: "balances the provision of a sufficient opportunity for the utility to earn a fair rate of return on equity and the interest of the ratepayers as a result of the discontinuance of the RAM. The tariff sheets filed to implement the RAM must conform to the RAM approved by the commission."

FAC rates shall not alter the processing timeline.]

(4) **Requirements for Electric Utilities that have a RAM.** If the commission grants, modifies, or continues an electric utility's RAM, the electric utility shall—

(A) Upon thirty (30) days prior written notice to the electric utility, provide for review by staff at its corporate headquarters, or some other place mutually agreed upon by the electric utility and staff, a copy of each and every nuclear fuel, coal, natural gas, and fuel transportation contract (to the extent related to generation of electricity), the utility's hedging policies and the utility's internal policy for participating in a Regional Transmission Organization (RTO) ancillary services market (if applicable), including every amendment and modification to each such contract or policy that was in effect during a RAM for the electric utility; and

(B) Notify the staff through EFIS of every new nuclear fuel, coal, natural gas, and fuel transportation contract and every new amendment and every new modification to currently existing contracts or to the policies referenced in subsection (4)(A) above within thirty (30) days of the effective date of the contract, amendment, or modification. The notification shall include where the contracts, amendments, modifications, and related competitive bidding materials may be reviewed.

(5) **Periodic Reports.** So long as it has a RAM in effect, each electric utility shall submit a report that covers each period used to accumulate costs and revenues for inclusion in the RAM through EFIS and to staff, OPC, and other parties. Each periodic report shall be verified by the affidavit of an electric utility representative(s) who has knowledge of the subject matter and who attests to both the veracity of the information and his/her knowledge of it. The information identified in this section shall be provided in electronic format where available (with formulas intact), and shall be submitted no later than the utility's filing for an adjustment to its RAM based on that accumulation period. Each periodic report shall contain the following information by month:

(A) The billing month actual energy usage in kWhs by rate class and voltage level;

(B) Net base energy costs billed in base rates by rate class and voltage level along with workpapers (with formulas intact) detailing the calculation;

(C) FARs by voltage level along with workpapers (with formulas intact) detailing the calculation;

(D) The fuel and purchased power costs and fuel related revenues for each month, year-to-date, and prior calendar year by account and any other designation ordered. If accounts, sub-accounts, and other designations are not comparable to costs and revenues listed in the electric utility's FAC tariff sheets, the electric utility shall also include the costs as listed in the tariff sheets;

(E) Off-System Sales.

1. If sold within an RTO market—

A. Revenue net of the cost of any energy purchases in the RTO market;

B. MWh's net of the MWh's for any energy purchases in the RTO market.

2. If sold outside of an RTO market (physical bilateral transactions)—

A. Total MWh's;

B. Total revenues;

Commented [OPC39]: And

OPC. **Commented [OPC40]:**

And OPC.

Commented [OPC41]: And OPC

Commented [OPC42]: OPC recommends a provision of this information to stay as it is – monthly. This proposed language means anywhere between 1 to 4 times a year since (1)(A) states AP can be between 3 and 12 months long. Getting information once a year isn't enough. Currently Ameren Mo would be providing 3 times a year and the others twice a year. Quarterly and semi-annually would be problematic for Ameren Mo.

Commented [OPC43]: "kWh" (no "s")

Commented [OPC44]: OPC Proposes: "If sold within an RTO market, provide by RTO market:

- A. Gross revenues for the sale of energy;
- B. Net revenues as calculated as required by FERC order 668;
- C. Gross MWh sold to the RTO; and
- D. Net MWh sold to the RTO as calculated as required by FERC order 668."

Commented [OPC45]: OPC Proposes: "If sold outside of an RTO market, provide by contract:

- A. Total MWh; and
- B. Total revenues."

(F) Capacity Sales.

1. If sold within an RTO market—
 - A. MW capacity sold net of MW capacity purchased;
 - B. Revenue received net of the cost of capacity purchased.

2. If sold outside on an RTO market (third party bilateral transactions)—
 - A. MW capacity sold;
 - B. Total revenue;

(G) Energy Purchases.

1. If purchased within an RTO market—
 - A. Cost net of the revenue of any energy sales from the RTO market;
 - B. MWh's net of the MWh's for any energy sales from the RTO market.
2. If purchased outside of an RTO market (physical bilateral transactions)—
 - A. Total MWh's;
 - B. Total revenues;

(H) Capacity Purchases.

1. If purchased within an RTO market—
 - A. MW capacity purchased net of MW capacity sold;
 - B. Cost net of the revenue received for capacity sold.
2. If purchased outside on an RTO market (third party bilateral transactions)—
 - A. MW capacity purchased;
 - B. Cost;

(I) Reason for the purchase of capacity in the RTO markets;

(J) The following information for the period, by generation facility, by fuel type, and by total for the electric utility:

Commented [OPC46]: OPC proposes: "If sold within an RTO market, by RTO market –"

Commented [OPC47]: OPC proposes: "If sold outside of an RTO market, provide by contract:"

Commented [OPC48]: OPC proposes: "If purchased within an RTO market, by RTO market –"

- A. Gross costs for the purchase of energy;
- B. Net costs as calculated as required by FERC order 668;
- C. Gross MWh purchased from the RTO; and
- D. Net MWh purchased from the RTO as calculated as required by FERC order 668."

Commented [OPC49]: OPC proposes: "If purchased outside of an RTO market, provide by contract;
A. Total MWh purchased; and
B. Total cost."

Commented [OPC50]: OPC proposes: "If purchased within an RTO market, provide by RTO market –"

- A. Gross MW capacity purchased;
 - B. Cost of Gross MW capacity purchased;
 - C. MW capacity purchased net of MW capacity sold in that market;
 - D. Cost of MW capacity purchased net of revenue from MW capacity sold in that market; and
 - E. Reason for capacity purchase.
- If purchased outside an RTO market, provide by contracted transaction –
- A. MW capacity purchased;
 - B. Cost of capacity purchased;
 - C. Duration of capacity contract; and
 - D. Reason for capacity purchase."

Commented [OPC51]: OPC proposes adding "by month"

1. Quantity of fuel burned, with the designation of the units in which the quantity is reported (e.g., tons, MCF, MMBtu);

2. Million British Thermal Units (MMBtu) of fuel burned;

3. Average cost of fuel per MMBtu, by fuel type;

4. Aggregate megawatt hours (MWhs) of net energy generated by the generating facility at each generation station, where net energy generated is the gross generation net of the station use;

5. Average cost of fuel per MWh; and

6. The cost of fuel purchased by fuel type and, for coal, a breakdown between the cost of the coal commodity and the cost of coal transportation;

(K) A detailed description of the accounts or other designations ordered by the commission, where each fuel and purchased power cost or fuel-related revenue is recorded. The report shall identify any changes since the last periodic report to accounts or other designations of costs and revenue types ordered to be included by the commission in the last general rate proceeding;

(L) Each revision to the electric utility's internal policy for participating in—

1. RTO ancillary services market, if the RTO in which the electric utility participates has such a market;

2. RTO energy markets by RTO;

3. RTO capacity markets by RTO;

4. Financial swaps or other financial-only transactions (if such financial transactions are included in the electric utility's RAM);

(M) Any additional information that the commission has ordered the electric utility to provide in its periodic reports.

(6) Surveillance Monitoring Reports. So long as it has a RAM in effect, each electric utility shall submit in EFIS and submit to staff, OPC, and other parties, a surveillance monitoring report, within fifteen (15) days after each of the electric utility's United States Securities and Exchange Commission (SEC) 10-Q and 10-K filings are due. The surveillance monitoring report shall be verified by the affidavit of an electric utility representative(s) who has knowledge of the subject matter and who attests to both the veracity of the information and his/her knowledge of it. These surveillance monitoring reports are confidential.

(A) There are six (6) parts to the electric utility surveillance monitoring report. Each part, except Part I—Rate Base Quantifications, shall contain information for the last twelve- (12) month period and the last quarter based on total company electric operations data and on Missouri jurisdictional operations data. Part I—Rate Base Quantifications, shall contain only information as of the ending date of the period being reported. The content of the surveillance monitoring report follows:

1. Part I—Rate Base Quantifications. The quantification of rate base items in Part I shall be consistent with the methods and procedures used in the electric utility's most recent rate proceeding before the commission, unless otherwise specified. Part I shall consist of specific quantifications of the following rate base items

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. All other items included in the electric utility's rate base from its most recent general rate proceeding before the commission;

L. Net Operating Income from Part III; and

M. Calculation of the overall return on rate base;

2. Part II—Capitalization Quantifications. Part II shall consist of specific quantifications of the following capitalization-related items:

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. Part III—Income Statement. Part III shall consist of an income statement containing specific quantifications of—

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

B. Operating and maintenance expenses in fuel expense, production expense, purchased power energy,

Commented [OPC52]: Can be replaced by MMBtu

Commented [OPC53]: Can be replaced with MWh

Commented [OPC54]: MWh

Commented [OPC55]: To make this apply to more than just coal, OPC proposes replace "and, for coal, a breakdown between the cost of the coal commodity and the cost of coal transportation" with "and, a breakdown between the cost of the commodity, cost of freight and cost of transportation by fuel type; and

7. Other fuel cost types designated in the RAM. "

Commented [OPC56]: For clarity OPC proposes end sentence with period after "proceeding," and add: "Account and other designations can change between rate cases but no new costs or revenue types shall be added between rate cases."

Commented [OPC57]: Add "(with formulas intact)"

Commented [OPC58]: Needs to be modified because Liberty does not make 10-Q and 10-K filings. Add a sentence that states, "If the electric utility with a RAM does not file with the SEC, then the surveillance monitoring reports shall be filed in quarterly intervals as identified in general rate proceedings of utilities with foreign ownership."

Commented [OPC59]: Need to include current form to insure consistency between utilities and across time.

and purchased power capacity;

- C. Transmission expense;
- D. Distribution expense;
- E. Customer accounts expense;
- F. Customer service and information expense;
- G. Sales expense;
- H. Administrative and general expense;
- 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, both actual and normal;

4. Part IV—Jurisdictional Allocation Factors. Part IV shall consist of a list of the jurisdictional allocation factors used for determining the electric utility's rate base, capitalization quantification, and income statement;

5. Part V—Financial Data Notes. Part V shall consist of notes to the reported 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. Specific identification and quantification of material variances between current twelve- (12-) month period and prior twelve- (12-) month period revenue;
- D. The expense levels of each item the commission has ordered be tracked in the RAM;
- E. Budgeted capital projects; and
- F. Events that materially affect debt or equity surveillance components;

6. Part VI—Missouri Energy Efficiency and Investment Act (MEEIA). An electric utility with approved MEEIA demand-side management programs and/or an approved demand-side programs investment mechanism shall include all quarterly filing requirements of 4 CSR 240-20.093(9);

(B) Each surveillance monitoring report shall include any additional information the commission has ordered be provided.

(7) Budget Report. Annually the electric utility shall submit in EFIS and provide to staff, OPC, and other parties, its approved budget for the upcoming budget year, in electronic format (with formulas intact) and in a layout similar to its surveillance monitoring report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget report shall be submitted within thirty (30) days of when the electric utility's budget is approved 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 designated "highly confidential" and treated accordingly.

(8) Periodic Changes to Fuel Adjustment Rates. An electric utility that has a FAC shall file proposed tariff sheet(s) to adjust its FARs following each accumulation period. The FARs shall be designed to bill the electric utility's customers, in the aggregate, the FPA if the FPA is positive, or return the FPA to the utility's customers if the FPA is negative. When an electric utility files with the commission tariff schedule(s) to change its fuel adjustment rates and serves it upon parties, the filed tariff schedule(s) shall be accompanied by—

(A) Prefiled testimony that shall include:

- 1. The proposed FARs;
- 2. The change in the FARs;
- 3. The impact of the proposed FARs on the monthly bill of the electric utility's typical residential customer, together with the definition of typical residential customer used to determine that impact;

Commented [OPC60]: There are no quarterly filings in 20.093(9). There are annual filings in (9). Could this mean (10)?

Commented [OPC61]: To assure timely filings and transparency, OPC proposes adding: "(C) If the electric utility also has any other approved cost recovery mechanism(s) which requires submission of surveillance monitoring reports, the electric utility shall submit a single Surveillance Monitoring Report that incorporates the requirements of the surveillance monitoring report requirements for all cost recovery mechanisms.

And

(D) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in this section, after notice and an opportunity for a hearing, the commission may suspend a fuel adjustment mechanism or order other appropriate remedies as provided by law."

Commented [OPC62]: "confidential" not "highly confidential"

Commented [OPC63]: For clarity add: "the following filings:"

Commented [OPC64]: OPC proposes adding:

- 4. The accumulation period NBEC, ANEC, and FPA; and
- 5. An explanation that details the factors which contributed to the FPA amount, including but not limited to:

- I. An explanation of each RAM cost including a quantification of the amount of change in each RAM cost, that changed as compared to the prior accumulation period and the reason for the change;
- II. An explanation of each RAM revenue including a quantification of the amount of change in each RAM revenue, that changed as compared to the prior accumulation period and the reason for the change; and
- III. If allowed in the RAM, quantification of hedging gains and losses with commissions paid to make such hedges listed separately;"

The reason for OPC's recommendation is to help readers of the testimony identify what cost/revenues changed from accumulation period to accumulation period and why they changed.

(B) The following information in electronic format where available (with formulas intact):

1. For the period of historical costs which are being used to propose the fuel adjustment rates—
 - A. The billing month and calendar month actual energy sales in kilowatt-hours, by rate class and voltage level;
 - B. The actual fuel costs of the types of fuel costs designated in the FAC, listed by generating station and fuel type;
 - C. The actual purchased power costs of the types of purchased power costs designated in the electric utility's FAC, differentiated by—
 - (I) Purchased power;
 - (II) Demand costs and energy costs, separately stated; and
 - (III) The actual fuel transportation costs of the types of fuel costs designated in the FAC;
 - D. The megawatt-hours and costs of purchased power of the type included in the electric utility's FAC;
 - E. Revenues, gross and net of off-system sales;
 - F. Fuel-related revenues other than off-system sales revenues separated by type of fuel-related revenue;
 - G. Net base energy costs collected in permanent rates—
 - (I) Any additional requirements the commission ordered;
 - (II) Calculation of each of the proposed fuel adjustment rates; and
 - (III) Calculations of the voltage differentiation in the proposed FAC rates, if any, to account for differences in line losses by service voltage level; and
 - H. 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;
2. The electric utility's monthly short-term debt interest rate, along with—
 - A. An explanation of how that rate was determined;
 - B. The calculation of the short-term debt interest rate;
 - C. Identification of any changes in the basis(es) used for determining the short-term debt interest rate since the last FAC rate adjustment; and
 - D. If there is a change in the basis(es) used for determining the short-term debt interest rate, a copy(ies) of the changed basis(es) or identification of where it/they may be reviewed;
- (C) Workpapers, in electronic format where available (with formulas intact), supporting all items in subsections (A) and (B) that are not provided in the electric utility's section (5) submission shall be submitted through EFIS and provided to staff, OPC, and other parties;
- (D) The electric utility shall initiate a new case with an ER designation for each periodic adjustment of its FARs;
- (E) An electric utility with a FAC shall file an adjustment to its FARs within two (2) months of the end of each accumulation period after the effective date of the FAC;
- (F) The tariff sheets reflecting the RAM define the costs and revenues that can be included in the RAM, subject to the following:
 1. If an RTO implements a new market settlement type that the electric utility or another party believes possesses the characteristics of, and is of the nature of, an RTO revenue or cost type approved by the commission for inclusion in the electric utility's FAC in the previous general rate increase, the electric utility shall include the new market settlement type subject to the following requirements:
 - A. The party proposing the inclusion of a new market settlement type shall make a filing before the commission.
 - (I) If the electric utility is proposing the inclusion of a new market settlement type, it will make a filing with the commission giving notice of the new cost or revenue type no later than sixty (60) days prior to the electric utility including the new settlement type in the ANEC.
 - (II) If a party other than the electric utility is proposing the inclusion of a new market settlement type, the filing shall be made sixty (60) days prior to the electric utility's next periodic adjustment filing;
 - B. The filing shall include, but is not be limited to:
 - (I) Identification of the account affected by the change;
 - (II) A description of the new settlement type demonstrating that it possesses the characteristics of, and is of the nature of a cost or revenue type allowed in the electric utility's FAC by the commission in the preceding general rate case; and
 - (III) Identification of the preexisting schedule, or market settlement type which the new settlement type replaces or supplements; and
 - C. To challenge the inclusion of a new market settlement type, a party shall make a filing before the commission including the reasons why it believes the electric utility did not show that the new market settlement type possesses the characteristics of a cost or revenue type allowed by the commission.
 - (I) The filing shall be made within thirty (30) days of the electric utility's filing.
 - (II) The party requesting the inclusion of the new market settlement type shall bear the burden of proof to show that the new market settlement type possesses the characteristics of, and is of the nature of a

Commented [OPC65]: kWh

Commented [OPC66]: What is this? It could be the sum of demand and energy costs, which appears at (II) already.

Commented [OPC67]: MWh

Commented [OPC68]: How is this different from C other than it requires MWh to be reported?

cost or revenue type allowed in the electric utility's FAC by the commission in the preceding general rate case.

(III) If a party challenges the inclusion of the market settlement type, the challenge will not delay the FAR filing schedule.

(IV) If the challenge is upheld by the commission, the costs will be refunded or revenues returned along with interest in the next periodic adjustment;

(G) The electric utility must be current on its submission of its surveillance monitoring reports;

(H) Staff shall review the information filed and submitted by the electric utility in accordance with this rule and additional information obtained through discovery, if any, to determine if the proposed adjustment to the FARs is in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established, continued, or modified in the utility's most recent general rate proceeding. Within thirty (30) days after the electric utility files its testimony and tariff sheets to adjust its FARs, the staff shall submit a recommendation regarding its examination and analysis to the commission;

(I) OPC and other parties may file a response to the electric utility's proposed FAR adjustment within forty (40) days after the electric utility files its testimony and tariff sheet(s) to adjust its FARs;

(J) Within sixty (60) days after the electric utility files its testimony and tariff sheet(s) to adjust its FARs, the commission shall either—

1. Issue an interim rate adjustment order approving the tariff sheets and the adjustments to the FARs;

2. Allow the tariff sheets and the adjustments to the FARs to take effect without commission order; or

3. If it determines the adjustment to the FARs is not in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the electric utility's most recent general rate proceeding, reject the proposed rate schedules, suspend the timeline of the FAR adjustment filing, set a prehearing date, and order the parties to propose a procedural schedule. The commission may order the electric utility to file tariff sheet(s) to implement interim adjusted FARs to reflect any part of the proposed adjustment that is not in question;

(K) If the staff, OPC, or other party which receives, pursuant to 4 CSR 240-2.135, the information that the electric utility is required to submit and as ordered by the commission in a previous proceeding, believes the information is insufficient to make a recommendation regarding the electric utility's proposed FAR, it shall notify the electric utility within ten (10) business days of the electric utility's filing of tariff sheets to adjust the FARs and identify the information required and not submitted in compliance with that rule or order. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was in compliance with the requirements of this rule and the commission's most recent order establishing, continuing, or modifying the FAC, within ten (10) business days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission.

1. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase the FARs shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing timeline for the adjustment to increase the FARs. If the commission issues an order compelling discovery, interest will not be accrued by the utility from the time the commission receives a motion to compel until the time that the utility provides the requested information. For good cause shown the commission may further suspend this timeline.

2. Except as provided herein, any delay in providing sufficient information in compliance with this rule and the commission's most recent order establishing, continuing, or modifying the FAC in a request to decrease the FARs shall not alter the processing timeline.

[(5)](9) True-Ups of RAMs. *[An electric utility that files for a RAM shall include in its tariff schedules and application, if filed in addition to tariff schedules, provision for true-ups on at least an annual basis which shall accurately and appropriately remedy any over-collection or under-collection through subsequent rate adjustments or refunds.] The purpose of a true-up case is to accurately and appropriately remedy any over-billing or under-billing during a recovery period, including the interest accrued at the utility's short-term interest rate.*

[(A) The subsequent true-up rate adjustments or refunds shall include interest at the electric utility's short-term borrowing rate.

[(B) The true-up adjustment shall be the difference between the historical fuel and purchased power costs intended for collection during the true-up period and billed revenues associated with the RAM during the true-up period.]

(A) When an electric utility files with the commission to true-up its RAM the filing shall be accompanied by—

1. Pre-filed testimony that includes a discussion detailing the material factors which contributed to the true-up amount;

2. The following information in electronic format where available (with formulas intact):

A. Any revision to the calculation of the net base energy cost for the accumulation period;

B. The calculation of the monthly amount that was over-billed or under-billed through its RAM;

Commented [OPC69]: For the purpose of providing consequence for failure to provide reports, OPC recommends adding a sentence which states: "Utilities that fail to timely submit a surveillance monitoring report without a waiver for good cause may be subject to Commission sanctions, including penalties, suspension of the RAM, or other appropriate remedies as provided by law."

Commented [OPC70]: As described in its pleading, OPC recommends adding a sentence stating, "The time to provide responses to data requests shall be no more than 10 calendar days."

Commented [OPC71]: Add a new subsection: "(L) A recommendation to approve a FAR or the absence of a response to a FAR filing does not constitute a statement that the electric utility met the requirements of section (5) of this rule."

This clarifies that a parties' silence does not necessarily mean they agree with what has been filed by a utility. Parties may not have time to review everything provided in section (5) in the 30-40 days after the utility provides the information, and sometimes, parties are not active on all cases.

C. The electric utility's monthly short-term debt interest rate along with—
 (I) An explanation of how that rate was determined;
 (II) The calculation of the short-term debt interest rate;
 (III) Identification of any changes in the basis(es) used for determining the short-term debt interest rate since the last RAM rate adjustment; and

(IV) If there is a change in the basis(es) used for determining the short-term debt interest rate, a copy(ies) of the changed basis(es) or identification of where it/they may be reviewed;

D. Any additional information that the commission has ordered the electric utility to include in its RAM true-up filing;

3. Workpapers, in electronic format where available (with formulas intact), supporting all items in this subsection, shall be submitted in EFIS and provided to staff, OPC, and other parties.

(B) The electric utility shall initiate a new file in EFIS designated as an "electric other" (EO) file number for each true-up of its RAM.

(C) The electric utility must be current on its submission of its [S]urveillance [M]onitoring [R]eports [as required in section (10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5)] at the time that it files its [application for a] true-up of its RAM in order for the commission to process the electric utility's requested [annual] true-up of any [under-collection] under-billing.

(D) The staff shall examine and analyze the information filed and submitted by the electric utility pursuant to 4 CSR 240-3.161 and additional information obtained through discovery, to determine whether the true-up is in accordance with the provisions of this rule, section 386.266, RSMo and the RAM established in the electric [utility's most recent general rate proceeding.] utility pursuant to this rule and additional information obtained through discovery and as ordered by the commission, to determine whether the true-up amount is in accordance with the provisions of this rule, section 386.266, RSMo, and the RAM established in the electric utility's most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files [its tariff schedules for a true-up. The commission shall either issue an order deciding the true-up within sixty

(60) days of the electric utility's filing, suspend the timeline of the true-up in order to receive additional evidence and hold a hearing if needed or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect by operation of law sixty (60) days after the utility's filing] for a true-up amount.

[1. If the staff, OPC or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes the information that is required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM has not been submitted or is insufficient to make a recommendation regarding the electric utility's true-up filing, it shall notify the electric utility within ten (10) days of the electric utility's filing and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was responsive to the requirements, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline for the adjustment to the FAC rates shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

2. If the party requesting the information can demonstrate to the commission that the adjustment shall result in a reduction in the FAC rates, the processing timeline shall continue with the best information available. When the electric utility provides the necessary information, the RAM shall be adjusted again, if necessary, to reflect the additional information provided by the electric utility.]

(E) OPC and other parties may file a response to the proposed true-up amount within forty (40) days of the electric utility true-up filing.

(F) Within sixty (60) days of the electric utility's true-up filing the commission shall issue an order—

1. Allowing the tariff sheet(s) reflecting the true-up amount to take effect without commission order;

or

2. If it determines that the true-up amount reflected in the tariff sheet(s) is incorrect, rejecting the proposed tariff sheet(s) containing the true-up amount, suspending the timeline of the true-up filing, setting a prehearing date, and ordering the parties to propose a procedural schedule. The commission shall allow the electric utility to file tariff sheet(s) to implement interim FARs reflecting any part of the true-up amount that is not in question, and questions about the correctness of the true-up amount will not delay adjustments to FAR rates unrelated to the true-up.

(G) If the staff, OPC or other party which receives, pursuant to 4 CSR 240-2.135, the information that the electric utility is required to submit and as ordered by the commission in a previous proceeding, believes the information is insufficient to make a recommendation regarding the electric utility's true-up filing, it

Commented [OPC72]: For clarity OPC proposes adding add new subsection: "Determinations of imprudence amounts, adjustments to FARs and any corrections shall be made in separate cases in EFIS, not in a FAR adjustment case."

Commented [OPC73]: Add requirement that electric utility must be current on its submission of its "periodic reporting requirements as required by subsection (5) and. . ."

Commented [OPC74]: 4 CSR 240-3.161 being rescinded so this should state "pursuant to this rule"

Commented [OPC75]: As explained in its pleading, OPC recommends adding a sentence stating, "The time to provide responses to data requests shall be no more than 10 calendar days."

shall notify the electric utility within ten (10) days of the electric utility's filing and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was responsive to the requirements, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission.

1. While the commission is considering the motion to compel, the processing timeline for the determination of the true-up amount shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. If the commission issues an order compelling discovery, interest will not be accrued by the utility from the time the commission receives a motion to compel until the time that the utility provides the requested information. For good cause shown the commission may further suspend this timeline.

2. If the party requesting the information can demonstrate to the commission that the true-up amount shall result in a reduction in the FAR, the processing timeline shall continue with the best information available. When the electric utility provides the necessary information, the FAR shall be adjusted again, if necessary, to reflect the additional information provided by the electric utility.

[(6)](10) Duration of RAMs and Requirement for General Rate Case. Once a RAM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification, extension, or discontinuance of the RAM in a general rate proceeding, although an electric utility may submit proposed rate schedules to implement periodic adjustments to its FAC rates between general rate proceedings.

(A) If the commission approves a RAM for an electric utility, the electric utility must file a general rate case with the effective date of new rates to be no later than four (4) years after the effective date of the commission order implementing the RAM, assuming the maximum statutory suspension of the rates so filed.

1. The four- (4-)/- year period shall not include any periods in which the electric utility is prohibited from collecting any charges under the [adjustment mechanism] RAM, or any period for which charges collected under the [adjustment mechanism] RAM must be fully refunded. In the event a court determines that the [adjustment mechanism] RAM is unlawful and all [moneys/monies] collected are fully refunded as a result of such a decision, the electric utility shall be relieved of any obligation to file a general rate case. The term fully refunded as used in this section does not include amounts refunded as a result of reductions in fuel or purchased power costs minus fuel-related revenues or prudence adjustments.

[(7)](11) Prudence Reviews Respecting RAMs. A prudence review of the costs subject to the RAM shall be conducted no less frequently than at eighteen- (18-)/- month intervals.

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate.

(B) The staff shall file notice within ten (10) days of starting its prudence review and shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after [the staff initiates] initiating its prudence [audit] review. [The timing and frequency of prudence audits for each RAM shall be established in the general rate proceeding in which the RAM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.] Parties to the prudence review proceeding shall have ten (10) days after the staff files its recommendation to request a hearing. The commission shall issue an order not later than thirty (30) days after the staff files its recommendation if no party requests a hearing.

If the staff, OPC, or other party auditing the RAM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's RAM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

1. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.

[(8)](12) Disclosure on Customers' Bills. Any amounts charged under a [RAM approved by the] commission-approved RAM shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to the commission for the commission's approval in the general rate proceeding establishing, modifying, or continuing the RAM.

Commented [OPC76]: Add a new subsection: "(H) A recommendation to approve a true-up or the absence of a response to a true-up filing does not constitute a statement that the electric utility met the requirements of section (5) of this rule."

This clarifies that a parties' silence does not necessarily mean they agree with what has been filed by a utility. Parties may not have time to review everything provided in section (5) in the 30-40 days after the utility provides the information, and sometimes, parties are not active on all cases.

Commented [OPC77]: As explained by its pleading OPC recommends adding a new subsection that provides, "To the extent the same costs that were reviewed for prudence in a rate case are subject to review in a prudence case, the Staff's recommendation shall identify the rate case number, the costs reviewed, and the analysis previously provided."

Commented [OPC78]: As explained by its pleading OPC recommends adding a new subsection that provides, "The Commission shall review a utility's incurred costs through prudence reviews. In a prudence review, a utility's costs are reviewed under a reasonable person standard. A utility's conduct should be judged by asking whether the conduct was reasonable at the time under all circumstances, considering the utility had to solve its problem prospectively rather than in reliance on hindsight."

Commented [OPC79]: As explained by its pleading OPC recommends adding a new subsection that provides, "The utility carries the burden of proof to show its costs are just, reasonable, and prudent."

[(9)](13) Rate Design of the RAM. The design of the RAM rates shall reflect differences in losses incurred in the delivery of electricity at different voltage levels for the electric utility's different rate classes[. Therefore, the electric utility shall conduct a] **as determined through the periodic conduct of Missouri jurisdictional system loss studies. When the electric utility initially seeks authority to use a RAM, the end of the twelve- (12-) month period of actual data collected that is used in its Missouri jurisdictional system loss study within twenty-four (24) months [prior to the general rate proceeding in which it requests its initial RAM. The electric utility shall conduct a Missouri jurisdictional loss study no less often than every four (4) years thereafter, on a schedule that permits the study to be used in the general rate proceeding necessary for the electric utility to continue to utilize a RAM.] immediately preceding the date the utility files its general rate case requesting a RAM. When the electric utility seeks to continue or modify its RAM, the end of the twelve- (12-) month period of actual data collected that is used in its Missouri jurisdictional system loss study must be no earlier than two (2) years before the beginning of the twelve- (12-) month period the utility uses for developing the general rates it proposes the commission approve in that general rate proceeding.**

Commented [OPC80]: This should be its own sub-part for readability (i.e. "A")

Commented [OPC81]: This should be its own sub-part for readability (i.e. "B")

[(10) Submission of Surveillance Monitoring Reports. Each electric utility with an approved RAM shall submit to staff, OPC and parties approved by the commission a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.161(6).

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the RAM.

(B) If the electric utility also has an approved environmental cost recovery mechanism, the electric utility must submit a single Surveillance Monitoring Report for both the environmental cost recovery mechanism and the RAM.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.161(6), after notice and an opportunity for a hearing, the commission may suspend a fuel adjustment mechanism or order other appropriate remedies as provided by law.]

[(11)](14) Incentive Mechanism or Performance-Based Program. During a general rate proceeding in which an electric utility has proposed establishment or modification of a RAM, or in which a RAM may be allowed to continue in effect, any party may propose for the commission's consideration incentive mechanisms or performance-based programs to improve the efficiency and cost effectiveness of the electric utility's fuel and purchased power procurement activities **and/or off-system sales activities.**

(A) The incentive mechanisms or performance-based programs may or may not include some or all components of ~~[fuel and purchased power costs]~~ **base energy costs**, designed to provide the electric utility with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities **and/or off-system sales.**

(B) Any incentive mechanism or performance-based program shall be structured to align the interests of the electric utility's customers and shareholders. The anticipated benefits to the electric utility's customers from the incentive or performance-based program shall equal or exceed the anticipated costs of the mechanism or program to the electric utility's customers. ~~[For this purpose,]~~ **Customer rates shall include** the cost of an incentive mechanism or performance-based program ~~[shall include any increase in expense or reduction in revenue credit that increases rates to customers]~~ in any time period above what they would be without the incentive mechanism or performance-based program.

(C) If the commission approves an incentive mechanism or performance-based program, such incentive mechanism or performance-based program shall be binding on the commission for the entire term of the incentive mechanism or performance-based program. If the commission approves an incentive mechanism or performance-based program, such incentive mechanism or performance-based program shall be binding on the electric utility for the entire term of the incentive mechanism or performance-based program unless otherwise ordered or conditioned by the commission.

[(12)](15) Pre-Existing Adjustment Mechanisms, Tariffs, and Regulatory Plans. The provisions of this rule shall not affect[.]:—

(A) Any adjustment mechanism, ~~[rate schedule,]~~ tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

Commented [OPC82]: OPC suggests that this sentence end with a period after, "base energy costs." Delete the part of the sentence starting with "designed to provide" and ending with "and/or off-system sales."

It would be repetitive with the last part of (14) to include this part of the sentence.

Commented [OPC83]: This is not needed, in particular "(B)," because there are no experimental regulatory plans currently in operation.

[(13)](16) Nothing in this rule shall preclude a complaint case from being filed, as provided by law[, on the grounds that a utility is earning more than a fair return on equity, nor shall an electric utility be permitted

to use the existences of its RAM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity]. If a complaint is filed on the grounds that [a utility is earning more than a fair return on equity,] **an electric utility is acting in violation of its approved RAM tariff sheets or on the grounds that its rates have become unjust and unreasonable**, the commission shall issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed.

[(14) 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.]

(17) Party status and party rights in RAM proceedings subsequent to the last general rate case where the commission establishes, continues, or modifies the electric utility's RAM.

(A) Each party to the most recent general rate proceeding in which the commission established, continued, or modified the electric utility's RAM shall be a party to each subsequent related RAM rate adjustment proceeding, RAM true-up proceeding, and RAM prudence review proceeding, without applying to the commission for intervention, and shall be provided the periodic reports and surveillance monitoring reports required by this rule during the period of time when they are entitled to be a party to such proceedings without applying 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 and to consequently be a party, without seeking and being granted status as an intervenor to RAM-related proceedings initiated after that case.

(B) Anyone may seek to intervene, pursuant to 4 CSR 240- 2.075, in any RAM rate adjustment proceeding, RAM true-up proceeding, RAM prudence review proceeding, or general rate proceeding to modify, continue, or discontinue a RAM. If no party objects to the intervention request within ten (10) days of when it is filed, then the applicant for intervention shall be deemed to have been granted intervention without a specific commission order, 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.

(18) Discovery. Each discovery response that a party obtains in general rate proceedings where the commission approves, modifies, rejects, continues, or discontinues a RAM and in related subsequent RAM rate adjustment proceedings, RAM true-up proceedings, and RAM prudence review proceedings may be offered as evidence in any subsequent RAM rate adjustment proceeding, RAM true-up proceeding, RAM prudence review proceeding, or general rate proceeding to modify, continue, or discontinue its RAM as if the response were made to a discovery request in that proceeding without requiring the party who made the request to resubmit the same discovery request (data request, interrogatory, request for production, request for admission, or deposition), subject to commission ruling on any evidentiary objection(s). Unless the commission orders otherwise, *sua sponte* or on a party's motion, the discovery response shall have the same protection it was last afforded, by rule or by commission order.

(19) Supplementing and updating discovery responses in subsequent related proceedings. A party who provided a discovery response in a prior case as described in section (18) shall be under no obligation to supplement or update that response in a subsequent proceeding, unless the requesting party issues a discovery request in the subsequent case which clearly identifies the particular discovery requests to be supplemented or updated and the particular period to be covered by the updated response. A party responding to a request to supplement or update a prior proceeding discovery response shall supplement or update the discovery response where the responding party has learned or subsequently learns its response is in some material respect insufficiently detailed or incorrect.

(20) The commission shall establish a new case for each general rate proceeding, RAM rate adjustment proceeding, RAM true-up proceeding, and RAM prudence review proceeding.

(21) 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.

[(15)](22) Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause shown after an opportunity for a hearing.

AUTHORITY: sections 386.250, 386.266, and 393.140, [RSMo 2000 and 386.266,] RSMo [Supp. 2005]

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Electric Utility Fuel Adjustment Clause in Missouri: History and Application Whitepaper

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Electric Utility Fuel Adjustment Clause in Missouri: History and Application Whitepaper

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 2005¹ and provide an understanding of the functionality of the FACs currently implemented throughout the state of Missouri. This whitepaper is not an exhaustive description of the FAC in Missouri but is intended to provide a basic understanding of the history and application of Section 386.266 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 they allowed rates to go into effect without considering all relevant factors. The Court warned “to permit such a clause would lead to the erosion of the statutorily-mandated fixed rate system.”³ 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, fuel and purchased power costs for Missouri investor-owned utilities were normalized and included in the determination of the utility’s revenue requirement for general rate proceedings. This provided an incentive to the electric utility that, if it managed its activities in a manner that allowed it to reliably serve its customers at a cost lower than what was included in its revenue requirement in the last rate case, all the savings were retained by the electric utility. If costs were greater than the costs included in the revenue requirement, the electric utility absorbed the increased costs. When the electric utility believed that it could no longer absorb the increased costs, the electric utility would ask the Commission for an increase in its rates.

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.

http://www.senate.mo.gov/05info/BTS_Web/Actions.aspx?SessionType=R&BillID=5755

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. The two largest investor-owned electric utilities, Union Electric Company (“Union Electric”) and Kansas City Power & Light Company (“KCPL”) went for a period of twenty years without a rate increase request due to the excess generation they built in the 1970’s and 1980’s. Capital costs of these plants were included in the customers’ rates of these electric utilities. Excess generation and capacity from these utilities and other regional providers that over-built was sold through long-term contracts on a cost-plus basis to the smaller investor-owned electric utilities in the state. This resulted in minimal rate increase requests for these smaller investor-owned electric utilities and offset some of the capital costs paid by Union Electric Company and KCPL’s customers. Eventually the large utilities’ customers load requirements grew into the need for their own capacity and they did not renew the long-term contracts. Then, to meet their customers’ needs, the smaller electric utilities began to build the least cost option - natural-gas fired generation plants. While these plants were inexpensive to build, the fuel cost was uncertain.

In the early 1990’s, restructuring of the electric utilities began occurring in other parts of the nation. In the mid-1990’s the Missouri Legislature considered restructuring Missouri’s investor-owned electric utility companies. At the end of 2000, after two months of extraordinarily cold weather and continued reports of extreme storage withdrawals, the commodity price of natural gas spiked to nearly \$10 per thousand cubic feet (“Mcf”) in late December after remaining consistently between \$1/Mcf to \$3/Mcf since the inception of the unregulated wholesale natural gas markets in the 1980s.⁵ These wildly 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 nuclear and coal generation. However, the fluctuating natural gas prices significantly impacted the smaller electric utilities’ fuel and purchased power costs.

Overview of Section 386.266 RSMo

The provisions of Section 386.266 RSMo, also known as Senate Bill 179 (“SB 179”), took effect on January 1, 2006.⁶ This section 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 to reflect increases and decreases in its prudently incurred fuel and purchased power costs, including transportation costs. An FAC is a mechanism designed to reflect increases and decreases in fuel and purchased power costs, including transportation. The statute, in addition to requiring approval from the Commission for

⁵ Missouri Public Service Commission EFIS Case No. GW2001398XXX, Item no. 44, Final Report of the Missouri Public Service Commission’s Natural Gas Commodity Price Task Force, August 29, 2001

⁶ §386.266.12.

the implementation of an FAC, includes other provisions including some 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. It allows the Commission to include in an FAC features designed to provide incentives to improve the efficiency and cost-effectiveness of the electric utility's fuel and purchased-power procurement activities. If the Commission approves an FAC, the electric utility with the FAC must file a general rate increase case with effective dates of new rates no later than four years after its approval. Prudence reviews of the costs included in an FAC are to be conducted at least every eighteen months and true-ups are required at least annually. Amounts charged/refunded to the customers through an FAC are required to be separately disclosed on each customer's bill.

Section 386.266.1, which is the provision that grants the Commission the authority to approve, reject or modify FACs, applies only to investor-owned electric utilities in Missouri. At the time it became effective, there were four investor-owned electric utilities in Missouri – Union Electric, KCPL, Aquila, Inc. ("Aquila"), and the Empire District Electric Company ("Empire"). Union Electric subsequently did business as AmerenUE and is now doing business as Ameren Missouri. Aquila is now doing business as KCP&L – Greater Missouri Operations Company ("GMO").

Development of Commission Rules Regarding FACs

Section 386.266.9 RSMo gives the Commission the authority to promulgate rules to govern the structure, content, and operation of FACs. The Commission is also given the authority to promulgate rules regarding the procedures for the submission, frequency, examination, hearing, and approval of FACs. Soon after Section 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. It was determined that there would be two rules: one rule, found in *Chapter 3 Filing and Reporting Requirements* of the Commission's rules as *4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements*, provides 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. It also provides the contents of quarterly surveillance reports and monthly reporting requirement for electric utilities that are allowed an FAC. A second rule, *4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms*, provides the structure and governance requirements for an FAC.

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") in the development of proposed rules to present to the Commission. Auditors, engineers,

economists, and attorneys worked together in over fifteen workshops collaborating to develop specific language to propose to the Commission rules to implement the provisions of Section 386.266 RSMo pertaining to FACs. The Commission opened Case No. EX-2006-0472 on June 15, 2006 with a finding of necessity for rules to establish and implement an FAC and began the formal rulemaking process with the proposed 4 CSR 240-3.161 and 4 CSR 240-20.090 rules developed through 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 on September 21, 2006.⁷ The final order was published in the December 1, 2006 *Missouri Register* effective January 30, 2007.⁸

Key Provisions of the FAC Rules

Despite concerns that an FAC would contribute to over-earnings by electric utilities by the both the non-utility parties that participated in developing the proposed rules and those that provided comments in the formal rulemaking process, the resulting FAC rules do not contain an earnings test. In FAC proceedings, the Commission is only required to review the costs and revenues included in the FAC. Decreases in expenses and increases in revenues not included in the FAC are not considered by the Commission. However, utilities with an FAC are required by the Commission rules 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.⁹ 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.¹⁰

Because the statute requires adjustments to FAC rates reflect increases and decreases in prudently incurred costs, the rules require that FAC recoveries be based on historical costs.¹¹ Therefore, before the electric utility can begin billing to recover FAC costs, the costs in the utility's FAC must be incurred and any revenues included in the FAC to offset those costs must be received. 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.

⁷ Missouri Public Service Commission, Case No. EX-2006-0472, EFIS items 27 and 28

⁸ <http://s1.sos.mo.gov/CMSImages/adrules/moreg/previous/2006/v31n23/v31n23b.pdf>

⁹ 4 CSR 240-3.161(6)

¹⁰ However, the Commission, in File no. EC-2014-0223, stated that these surveillance reports alone do not provide a complete or accurate picture of earnings sufficient to reset the utility's rates.

¹¹ 4 CSR 240-20.090(2)(F)

The rules are not prescriptive regarding the design of FAC rates. However, 4 CSR 240-20.090(9) does require that FAC rates reflect differences in losses incurred in the delivery of electricity at different voltage levels for different rate classes based on system loss studies that must be conducted at least every four years.

While Section 386.266.1 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, the rules are not prescriptive regarding what such an incentive feature would look like. Instead it allows incentive features to be proposed in rate cases in which an electric utility requests the establishment, continuation or modification of an FAC.¹² 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 an FAC.

Section 386.266 is silent regarding the inclusion in an FAC of any fuel related type of revenues. The Commission rules do not require the inclusion of fuel related revenues, such as off-system sales revenues,¹³ in an FAC. The rules do require that if an FAC includes revenues from off-system sales, the FAC include prudently incurred fuel and purchased power costs associated with off-system sales.¹⁴

History of Requests for FACs

Empire was the first electric utility to request cost recovery of fuel costs under Section 386.266 RSMo when it filed Case No. ER-2006-0315 on February 1, 2006. This case was filed while the Commission rules were being drafted. In this case, Empire did not request an FAC. Instead it requested an Energy Cost Rider ("ECR") to recover costs between rate cases. Due to a stipulation Empire had entered into in a prior rate case, the Commission required Empire to remove from its pleadings and other filings its request and support for an ECR.¹⁵ Prior to Empire's next rate case, Case No. ER-2008-0093 filed on October 1, 2007, the Commission rules had been finalized and were effective. The Commission granted Empire an FAC in its July 30, 2008, *Report and Order* in ER-2008-0093 effective September 1, 2008. The Commission has authorized continuation of an FAC with modifications in all general rate cases subsequently filed by Empire.

¹² 4 CSR 240-20.090(11)

¹³ Off-system sales revenues are the revenues from sales of energy by the electric utility above what is needed by the utility's customers.

¹⁴ 4 CSR 240-3.161(1)(A) and 4 CSR 240-20.090(1)(B)

¹⁵ EFIS item 57, *Order Clarifying Continued Applicability of the Interim Energy Charge*, effective May 12, 2006.

On July 3, 2006 two of Missouri's investor-owned electric utilities filed general rate increase cases in which they requested an FAC. Union Electric, then doing business as AmerenUE, requested the Commission grant it an FAC in Case No. ER-2007-0002 and Aquila requested an FAC in Case No. ER-2007-0004. While the FAC rules were not final at this time, the Commission had, just eighteen days earlier, sent 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 its May 22, 2007 *Report and Order* in the AmerenUE case ER-2007-0002, the Commission concluded:

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.

AmerenUE filed another general rate increase case on April 4, 2008, again seeking the Commission's approval of an FAC in Case No. ER-2008-0318. 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 an FAC with modifications in all general rate cases subsequently filed by Union Electric now doing business as Ameren Missouri.

The Commission authorized the first FAC for a Missouri investor-owned electric utility under Section 386.266 RSMo in its May 17, 2007 *Report and Order* in Aquila's general rate proceeding in case 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 FAC was 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 the FAC consistent with the Commission's *Report and Order* were approved on June 29, 2007 effective July 5, 2007. Following this rate case, Great Plains Energy acquired Aquila renamed it GMO. The Commission has authorized the continuation of an FAC with modifications in all general rate cases subsequently filed by GMO.

KCPL was the last Missouri electric utility to be granted an FAC. At the time that SB 179 was being debated at the Legislature, KCPL was negotiating a regulatory plan that would address financial considerations of KCPL's investment in Iatan 2 and other investments and the timeliness of the recovery of the costs of these investments. As a part of the *Stipulation and*

¹⁶ EFIS item no. 589, page 70

*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 an FAC until the general rate case ER-2014-0370 it filed on October 30, 2014. The Commission granted KCPL an FAC in its September 2, 2015 *Report and Order*.¹⁸ Tariff sheets implementing an FAC for KCPL became effective September 29, 2015.

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. An estimate of the FAC costs and revenues, known as Net Base Energy Cost or NBEC, is identified and included in the base rates of each electric utility. The FAC rate is based on the difference between the FAC costs included in base rates and the actual FAC costs incurred. FAC costs are tracked in a designated accumulation period and the difference between actual FAC costs and NBEC is recovered or returned in a designated recovery period.

Even though the rule is not prescriptive regarding the design of the FAC rate, in practice, all of the electric utility's FAC rates are volumetric rates based on customer energy usage. A base factor is calculated in each general rate proceeding as the NBEC divided by the rate case normalized kilowatt-hours ("kWh"). The Commission's rule requires that the FAC is to be based on historical costs¹⁹ so there cannot be an FAC rate until FAC costs are incurred. Therefore the initial FAC rate, ("FAR"), is set at zero when the Commission approves the establishment of an FAC for each of the electric utilities.

To derive a rate to be charged the customers after FAC costs have been incurred, the difference between the actual costs incurred (actual net energy cost or ANEC) and the costs already included in the base rates (NBEC), either positive or negative, is divided by the expected energy use of the utility's customers over the recovery period. Because rule requires voltage losses to be taken into account in the FAC, a FAR is calculated for each of the voltage levels that the utility provides service at based on loss factors derived in the last rate case. These loss-adjusted FARs are the rate used to bill the FAC to the customers.

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

¹⁸ EFIS item no. 592, page 30

¹⁹ 4 CSR 240-20.090(2)(F)

Accumulation and Recovery Periods

An accumulation period is the time over which the electric utility tracks the ANEC. Commission rule allows up to four accumulation periods a year but requires at least one accumulation period a year. The Recovery Period is the time period over which the difference between the accumulation period ANEC and NBEC is billed to the utility's customers.

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
KCPL	January through June July through December	October through September April through March
GMO	June through November December through May	March through February September through August
Empire	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, KCPL, and GMO. The purpose of having recovery periods longer than the accumulation periods is to reduce the FAR and minimize the impact of the change in rates on the customers' bills. 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 KCPL and GMO are six months while the recovery periods are twelve months. Empire is the only utility where the recovery period is the same length as the accumulation period - both are six months.

The timing of recovery periods for Ameren Missouri, KCPL, and Empire were set to minimize the number of times during a year that changes in rates impact bills. The base rates for all of the electric utilities change twice a year. Base rates are higher in the summer months of June through September for all of the electric utilities because typically the cost to provide electricity is higher in these summer months. The lower, non-summer rates are billed in October through May.

The timing of the recovery periods of Ameren Missouri means that customers see both base rates and FAR changes in June and October and then see another rate change, due to the change in the FAR, 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 base rates and three times for the FAC rates.

Similarly, the timing of one of the FAC recovery periods for KCPL is October when base rates also change. One of Empire’s recovery periods begins in the same month that the base rates change for summer resulting in rates changing for Empire’s customers only three times a year. The timing of FAC rate changes for KCPL and Empire results in their customers seeing changes in rates just three times a year instead of four.

Calculation of Fuel Adjustment Rates

At the end of the accumulation period, a NBEC is calculated for the accumulation period based on the Base Rate set in the rate case and the actual energy consumed by the electric utility’s customers in the accumulation period. This NBEC is compared to the Actual Net Energy Costs (ANEC) incurred during that accumulation period. The FAR for the accumulation period is then calculated based on the difference between the actual historical costs incurred (ANEC) and the FAC costs billed in the base rates (NBEC) divided by the expected usage of the utility’s customers over the recovery period and then adjusting the rate for delivery losses.

This is the FAR that the customer is billed for Empire since the recovery period is the same length as the accumulation period. For the other three electric utilities that have recovery periods that are twice as long as the accumulation periods, the FAR that is billed the customer is actually the sum of the loss adjusted FARs for two consecutive accumulation periods.

Price Signal Resulting From FACs

There is a common misconception that FACs provide customers more accurate price signals than the base rates. There are several reasons Missouri’s FAC does not provide accurate price signals to customers. An accurate price signal is timing. Missouri’s FAC is based on historical costs so customers are not billed the difference in the FAC costs until months after the costs are incurred. For example, fuel costs incurred in January for KCPL are not billed to its customers until the recovery period that begins in October. At the time that a change in fuel costs is seen

on the customers' bills, it may no longer be an accurate representation of the fuel cost the utility is experiencing at that time.

Another reason that FACs in Missouri do not provide accurate price signals is that the accumulation periods bill costs or return savings to customers aggregated over several months. Increases in FAC costs in one month may be offset by decreases in FAC costs in the next month. In addition, the accumulation periods cross seasons of the year when FAC costs typically vary because the load requirements of the customers vary. For these reasons, the length of the accumulation period mutes any price signal.

Long recovery periods designed to reduce FAC rate volatility to customers also mutes the price signal to customers. For example, for KCPL any increase in costs in January is recovered over the time period of October of that same year through September of the next year. An increase in January is spread out over the twelve months of the recovery period so an increase in January combined with changes for all the months in the accumulation period and then spread over twelve months of estimated usage. This is the price signal that the customer is reacting to – not the actual increase in costs 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, the customer may be reacting to an increase in cost in the previous year during a time period when costs are actually decreasing. In this case, 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

SB 179 requires that true-ups of FACs occur at least annually.²⁰ The purpose of a true-up is to make sure that the electric utility recovers all the costs that it is entitled to or all amounts due to the customers are refunded. Section 386.266 requires the true-up amount include interest at the electric utility's short-term interest rate.

In practice, true-ups occur after the end of each recovery period. Because KCPL, GMO, and Empire have two recovery periods a year, there are two FAC true-ups a year for these electric utilities. There are three FAC true-ups a year for Ameren Missouri since it has three recovery periods a year. A true-up is simply a comparison of the actual FAC billed the customers in the recovery period to the difference between the actual FAC costs and NBEC in the corresponding

²⁰ Section 386.266.4(2)

accumulation 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.

The true-up amount is keyed off of 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 included treated uncollectible. The rate case treatment for uncollectibles is determined in the rate case and is not dealt with in the FAC.

Prudence Reviews

Section 386.266.4(4) requires prudence reviews of the costs in the FAC to occur at least every eighteen (18) months. Since the first FAC under section 386.266 was approved for GMO, the first prudence audit was conducted on GMO's FAC, followed by prudence audits on Empire and Ameren Missouri's FACs.²¹ In Ameren Missouri's 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.²² 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.²³ Since then Staff has only recommended one other imprudence finding in an FAC prudence audit. In case no. EO-2011-0390, the third GMO FAC prudence audit case, Staff alleged that GMO had acted imprudently in association with its hedging future purchases of spot market power by buying options to purchase natural gas. The Commission, in its *Report and Order* in this case, found that Staff failed to produce substantial controverting evidence demonstrating serious doubt to rebut the presumption of prudence with regard to GMO's hedging policy.²⁴

There have been no other recommendations by the Staff regarding imprudence with respect to the FAC since the September 4, 2012, *Report and Order* in the third GMO FAC prudence audit case.

²¹ Case Nos. EO-2009-0115, EO-2010-0084 and EO-2010-0255 for GMO, Empire and Ameren Missouri respectively.

²² *Report and Order*, page 2

²³ *Report and Order*, page 2

²⁴ Page 47

Incentive Mechanism

SB 179 allows the Commission to include, in an FAC, incentives to improve the efficiency and cost-effectiveness of the electric utilities' fuel and purchased power procurement.²⁵ The Commission, for each of the electric utilities, found that allowing the utility to have one hundred percent recovery of its FAC costs through an FAC would act as a disincentive for the utility to control FAC costs. The Commission determined that recovering a share of the difference between the NBEC and ANEC allows the electric utility a sufficient opportunity to earn a fair return on equity while protecting customers by providing an incentive to control costs. At the time that this white paper was written, the Commission had set that sharing percentage, for all of the electric utilities, to be 95%/5% - 95% of any increase in FAC costs above NBEC would be billed to the customers and the electric utility absorbs 5% while 95% of a decrease in FAC costs below NBEC would be credited to customers and the electric utility retains 5% of the decrease.²⁶

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, when costs are above the amounts included in base rates, the electric utility recovers almost 100% of the FAC costs. If FAC costs are below the amounts included in base rates, the utility recovers greater than 100% of its FAC costs. The table below shows examples of what occurs when actual costs are greater, equal to, and less than what is in the NBEC.

Impact of 95%/5% Sharing Mechanism

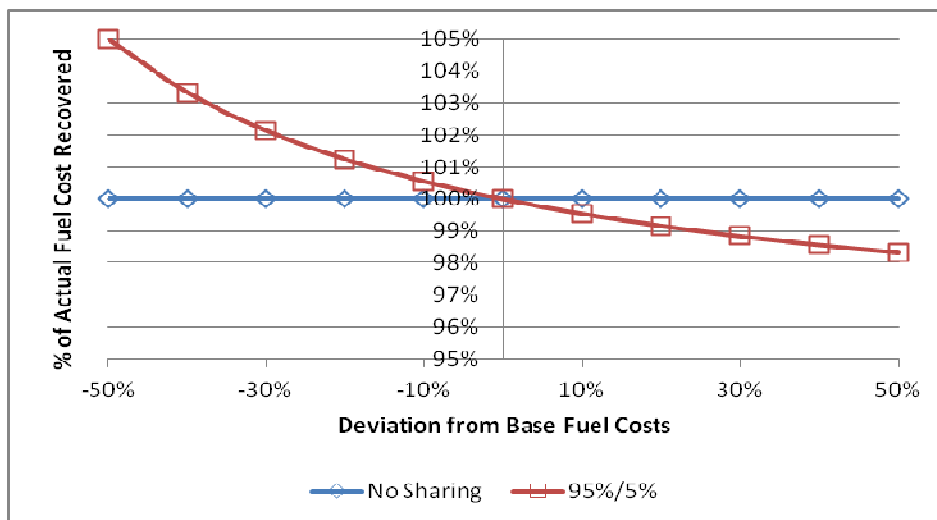
NBEC	ANEC	Diff	FAC Amt Billed to Customers	Amt Absorbed/ (Retained) by Company	Total billed to Customers	% FAC Costs Billed
\$100	\$150	\$50	\$47.50	\$2.50	\$147.50	98.3%
\$100	\$110	\$10	\$9.50	\$0.50	\$109.50	99.5%
\$100	\$100	\$0	\$0	\$0	\$100.00	100.0%
\$100	\$90	(\$10)	(\$9.50)	(\$0.50)	\$90.50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

This table shows incentive mechanism allows the utility to bill its customers for 98.3% of its FAC costs when its ANEC is 50% higher than what is included in base rates, i.e., even if the actual FAC costs incurred are 50% higher than what was included in the base rates, the electric utility

²⁵ Section 386.266.1

²⁶ 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.

recovers 98.3% of its actual FAC costs.²⁷ Likewise, if actual fuel costs are 50% lower than what is included in base rates, the utility will recover 105% of its actual FAC costs. If the utility manages to reduce its actual FAC costs any amount below NBEC, will recover more 100% of its FAC costs. This relationship is shown in the graph below.



These relationships hold true regardless of the magnitude of the NBEC.

Importance of Correct NBEC

Because Missouri's FAC is based on the difference between a subset of normalized costs and revenues set in a rate case and actual costs and revenues, it is important the costs and revenues included in the NBEC of the FAC are the same as the costs and revenues included in base rates. The table below shows three different scenarios. To simplify the example, in these scenarios there is no sharing of the difference between ANEC and NBEC. All of the difference between the ANEC and NBEC is billed or returned to the customers.

²⁷ 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 base rates

Net Base Energy Cost (NBEC)	FAC Costs in Base 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					
\$100.00	\$100.00	\$110.00	\$10.00	\$110.00	100.00%
\$100.00	\$100.00	\$100.00	\$0.00	\$100.00	100.00%
\$100.00	\$100.00	\$90.00	-\$10.00	\$90.00	100.00%
Scenario 2 - NBEC Lower than FAC Costs in Rates					
\$100.00	\$110.00	\$110.00	\$10.00	\$120.00	109.09%
\$100.00	\$110.00	\$100.00	\$0.00	\$110.00	110.00%
\$100.00	\$110.00	\$90.00	-\$10.00	\$100.00	111.11%
Scenario 3 - NBEC Higher than FAC Costs in Rates					
\$100.00	\$90.00	\$110.00	\$10.00	\$100.00	90.91%
\$100.00	\$90.00	\$100.00	\$0.00	\$90.00	90.00%
\$100.00	\$90.00	\$90.00	-\$10.00	\$80.00	88.89%

The first scenario is a correct treatment of NBEC and FAC costs in Rates. NBEC is equal to the FAC costs included in base rates. In this scenario, when ANEC is higher than NBEC, the total FAC costs billed the customer is the \$100 billed in the base rates and \$10 billed through the FAC for a total of \$110. When the ANEC is the same as the NBEC, the customers are billed nothing through the FAC and the utility recovers all of its FAC costs through its base rates. Lastly, when the actual costs are less than the NBEC, the customers' bills are reduced and the utility recovers all of its actual fuel costs.

In Scenario 2, the NBEC designated in the FAC is less than the FAC costs in rates. In this scenario, the customers always pay more than intended. Even when ANEC is the same as the FAC costs included in rates, the customer pays for the difference between the ANEC and NBEC. In this scenario, the customers always paying more than the actual FAC costs because the fuel costs included in the base rates is greater than the costs used to calculate the NBEC.

In Scenario 3, the NBEC is set higher than the FAC costs included in rates. In this scenario, the electric utility does not collect the actual energy costs because the amount of FAC costs included in rates is less than the NBEC set in the FAC. The amount recovered is the lower FAC costs included in rates and the difference between the higher NBEC and ANEC. In this scenario, the company does not receive the revenues that are intended with an FAC.

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

Future Application of the FAC

The FAC rules have a requirement that the Commission review the effectiveness of the rules by no later than December 31, 2010. On November 12, 2010, the Commission opened a repository file, EW-2011-0139,²⁸ as a repository file for documents and comments regarding effectiveness of the FAC rules. The electric utilities, OPC and other interested parties filed comments regarding the need for revisions to the rules by March 1, 2011. The Commission issued an order on March 27, 2014 directing staff to file a status report on the revision of the rules. Beginning on April 27, 2015, Staff began hosting a series of three workshops for stakeholders to provide input to Staff on its review of the rules and, where possible, prepare collaborative revisions to the rules. On February 4, 2015, the Commission directed Staff to complete its review and file its recommendations regarding changes to the rules by September 15, 2015. The Commission later extended that completion date to November 20, 2015 and then to February 15, 2016. At the time that this whitepaper was updated, the Commission had sent its proposed rule to the Department of Economic Development for review prior to it being sent to the Secretary of State to be published in the Missouri Register for comments.

²⁸ EW-2011-0139, *In The Matter Of A Repository File Concerning Staff's Review Of The Commission's Fuel Adjustment Clause Rules*



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Code of Federal Regulations > TITLE 18 -- CONSERVATION OF POWER AND WATER RESOURCES > CHAPTER I -- FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY > SUBCHAPTER B -- REGULATIONS UNDER THE FEDERAL POWER ACT > PART 35 -- FILING OF RATE SCHEDULES AND TARIFFS > SUBPART C -- OTHER FILING REQUIREMENTS

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) Fuel adjustment clauses (fuel clause) which are not in conformity with the principles set out below are not in the public interest. These regulations contemplate that the filing of proposed rate schedules, tariffs or service agreements which embody fuel clauses failing to conform to the following principles may result in suspension of those parts of such rate schedules, tariffs or service agreements:

(1) The fuel clause shall be of the form that provides for periodic adjustments per kWh of sales equal to the difference between the fuel and purchased economic power costs per kWh of sales in the base period and in the current period:

Adjustment Factor = $F_m / S_m - F_b / S_b$

Where: F is the expense of fossil and nuclear fuel and purchased economic power in the base (b) and current (m) periods; and S is the kWh sales in the base and current periods, all as defined below.

(2) Fuel and purchased economic power costs (F) shall be the cost of:

(i) Fossil and nuclear fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants.

(ii) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (a)(2)(iii) of this section.

(iii) The total cost of the purchase of economic power, as defined in paragraph (a)(11) of this section, if the reserve capacity of the buyer is adequate independent of all other purchases where non-fuel charges are included in either F_b or F_m ;

(iv) Energy charges for any purchase if the total amount of energy charges incurred for the purchase is less than the buyer's total avoided variable cost;

(v) And less the cost of fossil and nuclear fuel recovered through all inter-system sales.

(3) Sales (S) must be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of: (i) Generation, (ii) purchases, (iii) exchange received, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in paragraph (a)(2)(iv) of this section, less (vi) total system losses.

(4) The adjustment factor developed according to this procedure shall be modified to properly allow for losses (estimated if necessary) associated only with wholesale sales for resale.

(5) The adjustment factor developed according to this procedure may be further modified to allow the recovery of gross receipts and other similar revenue based tax charges occasioned by the fuel adjustment revenues.

(6)The cost of fossil fuel shall include no items other than those listed in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in Account 518, except that if Account 518 also contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from this account. (Paragraph C of Account 518 includes the cost of other fuels used for ancillary steam facilities.)

(7)Where the cost of fuel includes fuel from company-owned or controlled ^{fn1} sources, that fact shall be noted and described as part of any filing. Where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, and where the price of such fuel has been approved by that regulatory body, such costs shall be presumed, subject to rebuttal, to be reasonable and includable in the adjustment clause. If the current price, however, is in litigation and is being collected subject to refund, the utility shall so advise the Commission and shall keep a separate account of such amounts paid which are subject to refund, and shall advise the Commission of the final disposition of such matter by the regulatory body having jurisdiction. With respect to the price of fuel purchases from company-owned or controlled sources pursuant to contracts which are not subject to regulatory authority, the utility company shall file such contracts and amendments thereto with the Commission for its acceptance at the time it files its fuel clause or modification thereof. Any subsequent amendment to such contracts shall likewise be filed with the Commission as a rate change and may be subject to suspension under section 205 of the Federal Power Act. Fuel charges by affiliated companies which do not appear to be reasonable may result in the suspension of the fuel adjustment clause or cause an investigation thereof to be made by the Commission on its own motion under section 206 of the Federal Power Act.

^{fn1} As defined in the Commission's Uniform System of Accounts 18 CFR part 101, Definitions 5B.

(8)All rate filings which contain a proposed new fuel clause or a change in an existing fuel clause shall conform such clauses with the regulations. Within one year of the effectiveness of this rulemaking, all public utilities with rate schedules that contain a fuel clause should conform such clauses with the regulations. Recognizing that individual public utilities may have special operating characteristics that may warrant granting temporary delays in the implementation of the regulations, the Commission may, upon showing of good cause, waive the requirements of this section of the regulations for an additional one-year period so as to permit the public utilities sufficient time to adjust to the requirements.

(9)All rate filings containing a proposed new fuel clause or change in an existing fuel clause shall include:

(i)A description of the fuel clause with detailed cost support for the base cost of fuel and purchased economic power or energy.

(ii)Full cost of service data unless the utility has had the rate approved by the Commission within a year, provided that such cost of service may not be required when an existing fuel cost adjustment clause is being modified to conform to the Commission's regulations.

(10)Whenever particular circumstances prevent the use of the standards provided for herein, or the use thereof would result in an undue burden, the Commission may, upon application under § 385.207 of this chapter and for good cause shown, permit deviation from these regulations.

(11)For the purpose of paragraph (a)(2)(iii) of this section, the following definitions apply:

(i)Economic power is power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than the buyer's total avoided variable cost.

(ii)Total cost of the purchase is all charges incurred in buying economic power and having such power delivered to the buyer's system. The total cost includes, but is not limited to, capacity or reservation charges, energy charges, adders, and any transmission or wheeling charges associated with the purchase.

(iii)Total avoided variable cost is all identified and documented variable costs that would have been incurred by the buyer had a particular purchase not been made. Such costs include, but are not

limited to, those associated with fuel, start-up, shut-down or any purchases that would have been made in lieu of the purchase made.

(12)For the purpose of paragraph (a)(2)(iii) of this section, the following procedures and instructions apply:

(i)A utility proposing to include purchase charges other than those for fuel or energy in fuel and purchased economic power costs (F) under paragraph (a)(2)(iii) of this section shall amend its fuel cost adjustment clause so that it is consistent with paragraphs (a)(1) and (a)(2)(iii) of this section. Such amendment shall state the system reserve capacity criteria by which the system operator decides whether a reliability purchase is required. Where the utility filing the statement is required by a State or local regulatory body (including a plant site licensing board) to file a capacity criteria statement with that body, the system reserve capacity criteria in the statement filed with the Commission shall be identical to those contained in the statement filed with the State or local regulatory body. Any utility that changes its reserve capacity criteria shall, within 45 days of such change, file an amended fuel cost and purchased economic power adjustment clause to incorporate the new criteria.

(ii)Reserve capacity shall be deemed adequate if, at the time a purchase was initiated, the buyer's system reserve capacity criteria were projected to be satisfied for the duration of the purchase without the purchase at issue.

(iii)The total cost of the purchase must be projected to be less than total avoided variable cost, at the time a purchase was initiated, before any non-fuel purchase charge may be included in Fm.

(iv)The purchasing utility shall make a credit to Fm after a purchase terminates if the total cost of the purchase exceeds the total avoided variable cost. The amount of the credit shall be the difference between the total cost of the purchase and the total avoided variable cost. This credit shall be made in the first adjustment period after the end of the purchase. If a utility fails to make the credit in the first adjustment period after the end of the purchase, it shall, when making the credit, also include in Fm interest on the amount of the credit. Interest shall be calculated at the rate required by § 35.19a(a)(2)(iii) of this chapter, and shall accrue from the date the credit should have been made under this paragraph until the date the credit is made.

(v)If a purchase is made of more capacity than is needed to satisfy the buyer's system reserve capacity criteria because the total costs of the extra capacity and associated energy are less than the buyer's total avoided variable costs for the duration of the purchase, the charges associated with the non-reliability portion of the purchase may be included in F.

(Approved by the Office of Management and Budget under control number 1902-0096)

Statutory Authority

(Federal Power Act, [16 U.S.C. 824d](#), 824e, and 825h (1976 & Supp. IV 1980); Department of Energy Organization Act, [42 U.S.C. 7171](#), 7172, and 7173(c) (Supp. IV 1980); E.O. 12009, 3 CFR part 142 (1978); 5 U.S.C. 553 (1976))

History

[Order 271, [28 FR 10573](#), Oct. 2, 1963, as amended by Order 421, [36 FR 3047](#), Feb. 17, 1971; [39 FR 40583](#), Nov. 19, 1974; Order 225, [47 FR 19056](#), May 3, 1982; Order 352, [48 FR 55436](#), Dec. 13, 1983; [49 FR 5073](#), Feb. 10, 1984; Order 529, [55 FR 47321](#), Nov. 13, 1990; Order 600, [63 FR 53805](#), [53809](#), Oct. 7, 1998; [73 FR 57515](#), [57532](#), Oct. 3, 2008, as corrected at [73 FR 63886](#), Oct. 28, 2008]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[73 FR 57515, 57532](#), Oct. 3, 2008, amended this section, effective Nov. 3, 2008. "Implementation will begin April 1, 2010 pursuant to a six month staggered schedule."]

Case Notes

LexisNexis® Notes

Case Notes Applicable to Entire Part

Contracts Law : Types of Contracts : Lease Agreements : General Overview

Energy & Utilities Law : Administrative Proceedings : U.S. Federal Energy Regulatory Commission : General Overview

Energy & Utilities Law : Electric Power Industry : Federal Power Act : General Overview

Energy & Utilities Law : Purchase Contracts : Price Terms

Energy & Utilities Law : Purchase Contracts : Take or Pay : General Overview

Energy & Utilities Law : Transportation & Pipelines : Pipelines : Rates

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Tax Law : State & Local Taxes : Public Utilities Tax : General Overview

Case Notes Applicable to Entire Part

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transportation equipment used to transport fuel from the point of acquisition to the unloading point. [Go To Headnote](#)

Energy & Utilities Law : Administrative Proceedings : U.S. Federal Energy Regulatory Commission : General Overview

[City of Albany v. Ferc, 7 F.3d 671, 1993 U.S. App. LEXIS 27201](#) (7th Cir Oct. 19, 1993).

Overview: *In suit in which city challenged legality of contract between utility, from which city purchased power, and coal company, from which utility purchased fuel, FERC did not abuse its discretion by not setting complaint for an evidentiary hearing.*

- Payments to fuel suppliers under take-or-pay clauses are treated as part of the cost of fuel because they are recurring expenses associated with the cost of energy, while payments made to suppliers in order to buy out commitments to purchase fuel in the future are nonrecurring and not rolled into the price of fuel unless the Federal Energy Regulatory Commission makes an exception. [18 C.F.R. § 35.14](#). [Go To Headnote](#)

[Ohio Power Co. v. Ferc, 954 F.2d 779, 1992 U.S. App. LEXIS 1196](#) (DC Cir Feb. 4, 1992).

Overview: *Where the SEC determined that a cost price paid by a power company for coal was reasonable, the Federal Energy Regulatory Commission was bound by that finding in considering the company's request for a wholesale rate increase based upon the price.*

- The plain language of [18 C.F.R. § 35.14\(a\)\(7\)](#) requires the Federal Energy Regulatory Commission to include in a wholesale rate, a Securities and Exchange Commission-approved cost-based price for an associate's coal. [Go To Headnote](#)
- The language of [18 C.F.R. § 35.14\(a\)\(7\)](#) which requires that the "cost shall be deemed reasonable and includable" creates a conclusive presumption that the reasonable cost be included in the wholesale rate. [Go To Headnote](#)
- [18 C.F.R. § 35.14\(a\)\(7\)](#) establishes that if another regulatory body has already passed on a fuel price, the Federal Energy Regulatory Commission must abide by that determination. [Go To Headnote](#)
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Energy & Utilities Law : Purchase Contracts : Take or Pay : General Overview

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Energy & Utilities Law : Transportation & Pipelines : Pipelines : Rates

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Overview: Although court upheld FERC's decision to prevent electric utility passing fuel-related expenses onto its wholesale customers through its FAC, court remanded to the FERC with instructions to consider a waiver of compliance, in interest of fairness.

- [18 C.F.R. § 35.14 \(1987\)](#) authorizes fuel adjustment clauses (FAC). An FAC is a device allowing a utility to automatically pass onto its customers the increase or decrease cost of fuel without filing a new formal rate change each time the price of fuel fluctuates. Subsection 6 of [18 C.F.R. § 35.14](#) limits the type of costs or expenses related to fossil fuel includable in the FAC, to those specifically in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licensees. [18 C.F.R. § 35.14\(a\)\(6\) \(1987\)](#). Account 151(3) provides, inter alia, excise taxes, purchasing agents' commissions, insurance and other expenses directly assignable to cost of fuel may be included in the FAC. 18 C.F.R. sub. ch. c, part 101, Acct. 151(3) (1987). [Go To Headnote](#)

[Maine Public Service Co. v. Federal Power Com., 579 F.2d 659, 1978 U.S. App. LEXIS 10486](#) (1st Cir June 26, 1978).

Overview: Federal Power Commission (FPC), erred in holding that power company could never impose a surcharge and that surcharge was a reparation. The case was remanded for the FPC to review the surcharge to determine if it was just and reasonable.

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Securities Law : Public Utility Holding Companies : Acquisitions

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Tax Law : State & Local Taxes : Public Utilities Tax : General Overview

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Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Applications and entries conflicting with lands reserved or classified as power sites, or covered by power applications: See Public Lands, Interior, 43 CFR subpart 2320.

Interstate Commerce Commission: See Transportation, 49 CFR chapter X.

Irrigation projects; electrification, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 175

Regulations of the Bureau of Land Management relating to rights-of-way for power, telephone, and telegraph purposes: See Public Lands, Interior, 43 CFR Group 2800.

Rights-of-way over Indian lands: See Indians, 25 CFR parts 169, 170, and 265.

Securities and Exchange Commission: See Commodity and Securities Exchanges, 17 CFR chapter II.

Withdrawal of public lands: See Public Lands, Interior, 43 CFR Group 2300.

NOTES APPLICABLE TO ENTIRE CHAPTER:

ABBREVIATIONS: The following abbreviations are used in this chapter: M.c.f.=Thousand cubic feet. B.t.u.=British thermal units. ICC=Interstate Commerce Commission.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Notice terminating proceedings, see: [73 FR 79316](#), Dec. 29, 2008.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Policy Statements, see: [74 FR 37098](#), July 27, 2009.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Availability of Final Report, see: [82 FR 50517](#), Nov. 1, 2017.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Notice of guidance for processing Order No. 2000 Filings, see: [65 FR 45854](#), July 26, 2000.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Interim Instruction Manual for processing Order No. 2001 Filings, see: [67 FR 39272](#), June 7, 2002.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Orders, see: [69 FR 15932](#), Mar. 26, 2004; [70 FR 265](#), Jan. 4, 2005; [70 FR 37661](#), June 30, 2005; [70 FR 71760](#), Nov. 30, 2005; [71 FR 42587](#), July 27, 2006, as corrected at [71 FR 53965](#), Sept. 13, 2006; [72 FR 19112](#), Apr. 17, 2007; [72 FR 72239](#), Dec. 20, 2007; [73 FR 65526](#), Nov. 4, 2008; [75 FR 4689](#), Jan. 29, 2010; [75 FR 58293](#), Sept. 24, 2010; [77 FR 32184](#), May 31, 2012; [77 FR 64890](#), Oct. 24, 2012; [78 FR 73240](#), Dec. 5, 2013, as corrected at [79 FR 755](#), Jan. 7, 2014, and [79 FR 4075](#), Jan. 24, 2014; [79 FR 14369](#), Mar. 14, 2014, as corrected at [79 FR 18775](#), Apr. 4, 2014.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Policy statements, see: [70 FR 38757](#), July 6, 2005; [77 FR 69754](#), Nov. 21, 2012; [78 FR 5268](#), Jan. 25, 2013; [79 FR 42665](#), July 23, 2014; [82 FR 9343](#), Feb. 26, 2017.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Notice of Revisions to Electronic Quarterly Report Filing Process, see: [78 FR 28732](#), May 16, 2013.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Federal Energy Regulatory Commission, see: [81 FR 40973](#), June 23, 2016.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Final rule, see: [81 FR 50290](#), Aug. 1, 2016.]

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[PUBLISHER'S NOTE: For Federal Register citations concerning Part 35 Final action, see: [83 FR 9636](#), Mar. 6, 2018.]

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