BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of a Proposed Rule Regarding Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms	)))	**Case No. EX-2006-0472**

FINAL ORDER OF RULEMAKING

Issue Date: September 21, 2006 Effective Date: September 21, 2006

On June 14, 2006, the Commission opened a new proceeding to consider proposed rule 4 CSR 240-20.090. On June 16, 2006, the Staff of the Missouri Public Service Commission filed proposed rules regarding Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms with the Missouri Secretary of State's Office. A public comment period began on July 17, 2006 and ended on September 7, 2006.

On September 21, 2006, the Commission adopted the Final Order of Rulemaking, which is fully set forth as Attachment A.

IT IS ORDERED THAT:

1. 4 CSR 240-20.090 is adopted.

2. This order shall become effective September 21, 2006.

BY THE COMMISSION

(S E A L)

Colleen M. Dale
Secretary

Colleen M. Dale, Chief Regulatory Law Judge,
by delegation of authority pursuant to Section 386.240, RSMo 2000

Dated at Jefferson City, Missouri on this 21st day of September, 2006.

MEMORANDUM

TO: Colleen M. Dale, Secretary

DATE: September 21, 2006

RE: Authorization to File Order of Rulemaking with the Office of Secretary of State

CASE NO: EX-2006-0472

The undersigned Commissioners hereby find necessity to propose the rules as attached and authorize the Secretary of the Missouri Public Service Commission to file the following Order of Rulemaking with the Office of the Secretary of State:

Amendment to 4 CSR 240-20.090 - Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms

Jeff Davis, Chairman

Connie Murray, Commissioner

(NO)

Steve Gaw, Commissioner

- NO

Robert M. Clayton III, Commissioner

Linward "Lin" Appling, Commissioner

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service commission
Chapter 20 – Electric Utilities

ORDER OF RULEMAKING

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

4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1076). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Public hearings on this proposed rule and proposed rule 4 CSR 240-3.161 were held on August 22, 2006 in Kansas City; August 22, 2006, in Grandview; August 23, 2006, in St. Louis; August 23, 2006, in Overland; August 29, 2006, in Cape Girardeau; September 6, 2006, in Joplin; and September 7, 2006, in Jefferson City; the public comment period ended September 7, 2006. Timely filed written comments were received from seven (7) individuals and fourteen (14) groups or companies. A total of twenty (20) persons commented at the local hearings. Ten parties represented by counsel, providing either comments or the testimony of witnesses, participated in the hearing in Jefferson City. Written comments were received from Missouri Association for Social Welfare (MASW), Missouri Industrial Energy Consumers, Praxair, Inc., AG Processing Inc., Sedalia Industrial Energy Users Association (SIEUA), Noranda Aluminum, Inc., MO PSC Staff, Office of the Public Counsel, AARP, Missouri Attorney General's Office, Union Electric Company d/b/a AmerenUE, Older Women's League-Gateway St. Louis Chapter (OWL), William Hinckley on behalf of BioKyowa Inc., The Empire District Electric Company, Victor Grobelny, Kenneth and Jan Inman, Capt. Frank Hollifield on behalf of the U.S. Air Force, Terry Schoenberger, and Joan M. Berger. Persons commenting at the local hearings were: Melanie Shouse, John Moyle, Dennis Anderson, Angela Steele, Scott Apell, Joan Bray, Alberta C. Slavin, Eddie Hasan, Bob William, Curtis Royston on behalf of the Human Development Corp., Yaphett El-Amin, Fran Sisson, John Cross, Jamilah Nasheed, Becky Mansfield, Marvin Sands, Jean Wulser, Ann Johnson, Franklin C. Walker, William T. Hinckley, Tom Wigginton, Kevin Priestler, and Bill Pate. Counsel appearing in Jefferson City were Steven Dottheim on behalf of the PSC Staff, with witness Warren Wood, Lewis Mills, the Public Counsel with witnesses Russ Trippensee and Ryan Kind, John Coffman on behalf of the AARP and the Consumers Council of Missouri, Douglas Micheel on behalf of the Attorney General of Missouri, Diana Vuylsteke on behalf of the Missouri Industrial Energy Consumers (MIEC) with witness

Maurice Brubaker, Jim Lowery on behalf of AmerenUE with witness Martin Lyons, Stu Conrad on behalf of Noranda with witness George Swogger, Stu Conrad on behalf of the SIEUA, Praxair and AG Processing, Dennis Williams on behalf of Aquila and Jim Fischer on behalf of Kansas City Power and Light. Comments from laypeople were generally against the rules, because they believed a rate adjustment mechanism (RAM) would result in higher rates, would make rates more volatile, would remove incentives for efficiency and unjustly enrich utilities. Several lay commenters suggested that 50% of fuel costs be passed on to consumers and that 50% be paid for by the utility and its shareholders. Industry commenters supported or opposed a cap on the RAM, supported or opposed the utility "veto" provision, supported or opposed apportioning fuel costs between base rates and a RAM, and generally opposed the transition provisions. Both industry and lay commenters opposed or supported the rule in its entirety, some asserting that it was unnecessary and within the Commission's discretion to not adopt the rule and others asserting that the Commission was required to adopt rules in response to a legislative mandate. Comments are available for review in their entirety at www.psc.mo.gov, choose EFIS, Agree to Terms, Resources, highlight Case No., and type in EX-2006-0472.

COMMENT: The Attorney General believes that use of a fuel adjustment clause or any other rate adjustment mechanism is inappropriate and unfairly tilts the playing field in favor of the electric utilities. The Attorney General opposes adoption of the rules.

OWL asserts that during lobbying for passage of SB179, the rate adjustment mechanism (RAM) was referred to as a tool the Commission might use to devise a fair and balanced means of protecting consumers, as well as the regulated monopoly utilities. Sponsors gave assurances that the commission would devise the rules in a way to expressly include consumer protections.

AARP asserts that though the current draft reflects hard work by the PSC Staff, it is devoid of the consumer protections promised by the Legislature when the rules were authorized. These rules create an unbalanced shift in Commission policy, granting utilities single-issue benefits without incentives to control costs, without safeguards against overearning and without mitigation of rate volatility. When lobbyists were aggressively pushing SB179, they described the proposed RAM as simply a tool that the Commission could use (or not use), based upon whether the Commission could implement it in a balanced and fair way to both consumers and utilities. It was repeatedly stated that no utility would be authorized to use a RAM unless the Commission first promulgated rules that added strong protections for consumers. The current draft contains none. In a January 2006 handout, the Missouri Energy Development Association (MEDA) reassured legislators that the Commission has "complete authority to add whatever other protections it thinks are necessary." Unfortunately, MEDA took a different approach in its negotiations on the rule, rejecting every meaningful consumer protection proposed by various consumer representatives. The PSC Staff, as a neutral facilitator, has not been able to draft a rule that contains necessary protections to make the mechanism fair.

The MIEC asserts that Section 386.322 gives the Commission discretion to allow fuel adjustment mechanisms and gives the Commission discretion to promulgate rules governing them. However, it does not encourage or require the Commission to do so.

The legislature provided authority to the Commission to determine whether or not fuel adjustment mechanisms are appropriate and under what conditions. SB179 should not be viewed as a legislative endorsement of or mandate for fuel adjustment mechanisms.

The MASW asserts that the rule should not be adopted because the PSC lacks adequate resources to implement it. The Fiscal Note for SB179 appears to state that the PSC should be authorized additional staff to implement its provisions. However, the staffing level, which was 211 for Fiscal Year 2005, was reduced to 199 for FY06 and further reduced to 193 FY07. It is fair to say the staff that carries out the day-to-day auditing, economic and engineering analysis has been reduced by at least 25 over the last few years, during which time they have been given the additional duties associated with infrastructure surcharges and a substantial number of general rate cases. The agency's expense and equipment budget has been slashed by nearly one-third since FY05, reducing the funding needed for equipment, training, and outside experts. For these reasons, the MASW opposes adoption of the proposed rule.

On the other hand, AmerenUE asserts that when 179 out of 186 legislators adopted SB179, they expected Missouri's electric utilities to have available to them a fair, workable, and effective mechanism that would allow electric rates to be adjusted between general rate proceedings in a timely manner to reflect increases and decreases in prudently incurred fuel and purchased power costs. They included numerous features to balance consumer needs with the needs of the industry to recover, on a timely basis, these volatile and, to a large extent, uncontrollable costs. AmerenUE also noted that, of the 29 states in which utilities are traditionally (rate-of-return) regulated, only two others, Utah and Vermont, do not allow for RAMs. AmerenUE supports adoption of the rule.

Although the PSC Staff did not take a position on SB179, Section 386.266 is the law and Staff is committed to making this law work, in keeping with Staff's understanding of it and the rest of the laws of Missouri. Staff believes these rules are well structured to address the issues that face the Commission associated with implementation of the electric utility fuel and purchased power costs recovery portions of 386.266.

RESPONSE: The Commission agrees that the rules being adopted are discretionary, in that SB179 does not expressly state that the Commission must adopt rules implementing the law. However, the law does state that companies may request a RAM before rules are in place, but may not receive a RAM from the Commission until the rules are in place. Failing to adopt rules would prevent any RAM from being granted by the Commission. The rules are proposed to give guidance to utilities, the PSC Staff and other interested parties as to what is expected in a rate case in which a RAM is considered, and defines the parameters under which a RAM would be administered once put in place. The Commission believes that the proposed rule, as amended herein, constitutes the best balance it can make at this time. As following discussions will show, the Commission is committed to continually refining the rule until the optimal balance is reached.

COMMENT: Several lay commenters opposed the rules on the basis that the use of a RAM would raise rates. OWL noted that most older women live on fixed incomes and tight budgets. Any increase resulting from a FAC will impose deep hardships on older women. Mr. and Mrs. Inman also noted that they vigorously oppose rules for utilities to increase their rates without Commission review, which would place public utilities on a path of non-control, allowing a utility to raise rates because of a perceived increase in

supply. The MASW asserts that the rule as proposed offers no protection to those ratepayers who are in economic distress. The additional burden of passed-through increases in the cost of their electric provider's fuel, creates a greater hardship on the economically disadvantaged. It further asserts that the Commission should, in approving a RAM, include relief for economically distressed ratepayers from rate increases produced by the RAM. The PSC Staff responds that, if approved by the Commission, any RAM charges, or credits, must be identified as a line item on the customer's bill. If the RAM is in the form of a fuel adjustment clause (FAC), rates will be able to go up or down with actual changes in fuel and purchased power costs and possibly go up or down based on changes in off-system sales revenues. If the rate adjustment mechanism is in the form of an interim energy charge, then only refunds will be possible. Under Section 386.266, a RAM cannot be in effect for longer than four years without an earnings review and modification or extension by the Commission. While a RAM is in effect, the utility is required to comply with monthly and quarterly reporting requirements to the parties of the rate proceeding in which the RAM was established, continued or modified. Prudence audits will be conducted no less often than every 18 months. Current proposed rules anticipate annual changes to the RAM in order to true-up over- or under-collections. The RAM charge, or credit, will be permitted to change up to four times each year.
RESPONSE: The RAM is created to allow a pass-through of certain costs more directly to ratepayers. At the present time, all of those costs are included in the base rate charged by the utility. Under these rules, a portion or all of the utility's fuel and purchased power costs can be removed from base rates and separately recovered in a RAM charge. In theory, the total of the base rate plus the RAM charge will be approximately the same as the base rate prior to the RAM. In times of rising fuel costs, RAM charges will increase with greater frequency than base rates would. However, in times of falling fuel costs, RAM charges will decrease with greater frequency than base rates would. The Commission believes that, consistent with the statute, the safeguards established in this rule will prevent the runaway fuel bills some parties fear.

COMMENT: Several lay commenters verbally suggested that it would only be fair for utilities to pass through only 50% of fuel costs and that the utility and its shareholders be required to pay the other 50%.
RESPONSE: These commenters may be confusing the proposal by other commenters that no more than 50% of fuel and purchased power costs be recovered in a RAM and that 50% remain in base rates, a proposal to be discussed more fully below. If not, then the Commission must disagree with this comment in that it would not allow for the setting of just and reasonable rates that allow the utility a reasonable return.

COMMENT: Several commenters have raised the issue of rate volatility, which can be broken down into three sets of comments. The first has to do with the needs of residential ratepayers on fixed or limited incomes. Several comments were received concerning the very tight budgeting used by such households and the havoc wreaked to those budgets when rates can fluctuate significantly every quarter.
RESPONSE: The Commission requires all electric utilities to offer "budget billing," which allows residential consumers to be billed the same rate every month, with estimates based on historical usage. The Commission will require that any RAM used by

a utility be incorporated into the budget billing amount consistent with the way base rates are budget billed, pursuant to the utility's tariff.

COMMENT: The Attorney General asserts that, as presently written, these rules shift 100% of the risk of fuel price changes from the utility to the consumers. To better balance the consumer and electric utility interests the Commission should insert the following consumer protections into the proposed rules: Earnings Review: "After the Commission has authorized any of the rate adjustment mechanisms authorized by this rule, the electric utility shall provide the Staff, Public Counsel and other authorized parties access to the surveillance reports that detail the electric utility's earnings. If after hearing the Commission determines that an electric utility's earnings exceed its authorized rate of return the Commission shall adjust the RAM surcharge to prevent windfall profits." The Attorney General's proposed language would allow the Commission to determine the appropriate balance of fuel and purchased power costs that would be subject to the RAM. By allowing all or some of fuel and purchased power costs to remain in base rates the commission can ensure that the electric utility keeps its fuel and purchased power costs as low as possible.

AARP suggests that an additional sentence to be included in the definition of a "FAC" [4 CSR 240-20.090(C)] : (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. A FAC shall not include more than fifty percent (50%) of the fuel and purchased power costs that are recognized in an electric utility's rates 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;" If the Commission must implement a FAC rule, one of the most fair ways to treat these fuel and purchased power costs is on an even-handed 50/50 basis. Fifty percent of these costs can be imbedded in base rates during a rate case (where 100% of expected costs are now recognized), while fifty percent of such costs can be recognized through an ongoing FAC surcharge.

Industrial users also favor retention of a portion in base rates, accommodating a sharing by the utility and ratepayers of a significant portion of the cost and risk, thereby aligning the utility interest with the interests of customers in low and stable rates. An important consequence of interest alignment is that less Staff time will be used in after-the-fact reviews. If well designed, and coupled with robust surveillance, the system could be virtually self-policing. Rates will be lower in the first place, and administrative efficiency will be enhanced both for Staff and the utilities.

RESPONSE: The Commission finds that a clear statement that it may apportion fuel costs between base rates and a RAM is appropriate, as more fully set forth below. The Commission will not establish a fixed level of apportionment, as the inherent differences in the operation of the utilities, particularly the difference in their fuel mixes for base-load generation would render a fixed amount unreasonable in some instances. The Commission believes such authority is inherent in SB179, but will add the language to clarify that it has such authority.

COMMENT: The final mitigation strategy discussed is the imposition of a cap on the amount that may be recovered through a RAM. Such a mechanism is especially important to the large, industrial users. Noranda asserts that a rate cap offers a simple approach that will limit rate volatility. Two types of rate caps have been discussed. First, there is a "hard" cap that establishes a finite "not to exceed" limit. Any excess over the level of the cap is simply lost to the utility and may not be recovered. Second, a "soft" cap, really a deferral mechanism, smoothes a "spike" increase over a longer period of time. A soft cap permits the utility to defer costs above the cap, spreading them to a later period while accruing carrying charges. Noranda recommends a "soft" cap to be applied on the same percentage basis to all customers with any allowed fuel cost amounts in excess of the cap to be deferred for later collection. Appropriate interest provisions will protect the utility. Historically, the Commission has used a phase-in of large rate increases. These rate phase-ins (a series of "rate caps") mitigate extraordinary increases and any disruptive rate volatility. For large industrial users, a sharp or extraordinary rate increase might be so severe as to result in a shutdown. The nature of Noranda's operations are such that, were it to shut down its smelter, the capital costs associated with resuming production could be prohibitive. Noranda's suggestion is that the final rule authorize a party to propose a rate volatility mitigation mechanism in a rate case in which a FAC is being considered. That will permit the issue to be addressed in a manner that can accommodate the size differences between utilities. In this case, one size does not fit all.

While the MIEC does not find much value in a rate cap, it recognizes that some customers do. The Commission may want to have the latitude to cap the level of recoveries in order to reduce rate volatility and to moderate rate impact on customers.

BioKyowa agrees the option of a "soft" cap should be added to the rule.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds it reasonable to allow a party to the general rate proceeding in which a RAM is considered to propose a "soft" rate cap, in sufficient detail to allow a meaningful discussion of such a cap and the terms thereof. The Commission will add language to (2)(H) as fully set forth below.

COMMENT: Virtually all industry commenters, both utilities and end users, assert the importance of recognition of line losses. This is simply in recognition of the fact that the physics of the electric system mean that line losses do differ at different voltage levels. At present, the rule uses the word "may." The commenters assert that "may" should be changed to "shall." As commenters explain, each transformer and all of the transmission and distribution lines consume some portion of the electrical energy in order to perform their respective functions. The electricity consumed in the transformations up and down among the various voltage levels and in the movement of the electricity over the transmission and distribution lines is termed "losses." In a technical sense, the energy is not "lost," but rather is a necessary component of and is consumed in the transportation/transmission process from the many generators to the many loads. It may be dissipated as radiant heat energy, overcoming the resistance and impedance of the transmission wires and the coils in the transformer. It is only "lost" in the sense that a portion of the energy generated is necessarily consumed by a utility's electrical system in the process of transformation, transmission and distribution, but it is, therefore not available for service to customers. These are physical principles and are not optional.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that the mandatory recognition of line losses shall be recognized in the establishment of a RAM as they are in setting base rates. Therefore "may" in (9) is changed to "shall."

COMMENT: Some commenters believe these rules must be written so that the utility continues to have its own financial interests at stake, in order to ensure some level of prudence in utility practices with a RAM and that these incentives should be structured to align the interest of shareholders and ratepayers. Some commenters believe the proposed rules go beyond the strict construction of Section 386.266.1 and allow the Commission to impose a broad array of incentive and performance based programs.

Staff agrees that the rules that implement this portion of SB179 should include provisions for incentive and performance based programs. Section (11), consistent with § 386.266, provides that the Commission may implement incentive mechanisms and performance based programs to improve the efficiency and cost-effectiveness of the electric utility's fuel and purchased power procurement activities. Proposed (11)(B) specifies important objectives and criteria for establishment of incentive plans such as "aligning the interests of the electric utility's customers and shareholders" and "the overall anticipated benefits of the electric utility's customers from the incentive or performance based program shall exceed the anticipated costs of the mechanism or program to the electric utility's customers."

AmerenUE does not object to (11), except that the words "or discontinuation" should be deleted, as RAM incentive plans are not contemplated when the RAM is being discontinued. In addition, references to "performance based programs" relating to a RAM are misplaced. The issues addressed in (11) are "incentives to improve the efficiency and cost effectiveness of fuel and purchased power procurement activities." Section 386.266.1, RSMo. Those are the kinds of incentives that relate to RAMs. The only mention of "performance based programs" in SB179 appears elsewhere in SB179 in a separate, stand-alone provision pertaining to incentive or performance based regulation generally, not incentives related to fuel and purchased power procurement, or RAMs respecting fuel and purchased power procurement.

Other commenters support the inclusion of (11) and are especially supportive that the stated concept of alignment of interest between utility and ratepayer should be preserved and enhanced. Many comments about incentives have been discussed in the volatility mitigation section concerning flexibility to determine what percentage of fuel and purchased power cost are to be recovered in base rates and what percentage could be recovered in a RAM, because that financially connects obtaining fuel and purchased power at a lower cost to earning a higher return. However, commenters generally were not supportive of limiting, at this time, the kinds of incentive mechanisms that could be used or restraining the PSC Staff or any Party from proposing any incentive plan that would maintain the alignment of financial interests between the utility and ratepayers. Industrial Users recommended strengthening the provisions to enhance the likelihood of symmetrical sharing incentive provisions.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that the provisions for incentive mechanisms are sufficiently broad to encompass a wide range of programs, that the interests of both utilities and ratepayers are sufficiently safeguarded and that the rule does not exceed the scope of the authority for such programs in the

statute. Therefore, no change will be made, except the grammatical change removing "or discontinuance."

COMMENT: The industrial users recommend that (11)(B) be clarified to allow symmetrical cost sharing in incentive mechanisms or performance based programs, as the present language requires the anticipated benefits to the utility's customers from the incentive or performance based program to exceed the anticipated costs of the mechanisms or programs to the utility's customers. The Staff concurred in this comment, asserting that equal sharing was reasonable.
RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that it is reasonable that the benefits of such programs may either equal or less than their costs. The Commission will clarify the language in (11)(B) as set forth below

COMMENT: The Attorney General asserts that the definition of fuel and purchased power costs as "prudently incurred and used fuel and purchased power costs, including transportation costs" in (1)(B) is too broad and could allow increased fuel costs caused by inappropriate or negligent acts or omissions of the electric utility to be included in the RAM, and that the single standard of "prudence" would not preclude such inclusion. The Attorney General recommends the following inclusion "Any and all increased fuel and purchased power costs caused by an electric utility's failure to appropriately operate its generating facilities shall not be included in any rate adjustment mechanism authorized by Section 386.266." The Attorney General suggests similar changes where the phrase "prudently incurred costs" appears.
RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that the prudence standard alone is insufficient and that increased costs resulting from negligent or wrongful acts should not be included in a RAM, as set forth below. The Commission believes the single addition of language in (1)(B) will be sufficient.

COMMENT: Staff would correct (4)(A), second sentence, as the current language would appear to require two filings where the intent was that only one filing is mandatory and up to three more are permitted.
RESPONSE AND EXPLANATION OF CHANGE: The Staff's point is taken and the change will be made.

COMMENT: Almost universally, the ratepayer commenters opposed the transitional provisions set out in (17), which provided "If the electric utility files a general rate proceeding thirty (30) days or more after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the provisions of this section shall apply. . ." This proposed section of the rule states that even though the rules is only proposed, any electric utility that files a general rate proceeding thirty days or more after the Commission issued its Notice of Proposed Rulemaking in this matter must follow the proposed requirements of subsection (16).
RESPONSE AND EXPLANATION OF CHANGE: Without delving deeply into the comments against this section of the rule, the Commission agrees that it is questionable whether such transitional provisions are permissible under Missouri's rulemaking

provisions and agrees that there is little practical advantage to having such transitional rules in place. Therefore, (17) will be deleted in its entirety.

COMMENT: The Attorney General recommends that the phrase "initiated by the file and suspend method" be inserted into the definition of general rate proceeding.
RESPONSE: While the Attorney General is correct about the technical description of the ways to initiate a general rate proceeding, the insertion of the language is not necessary to clarify in what sort of proceeding a RAM may be sought. Therefore, no change will be made.

COMMENT: Some commenters believe these rules should not include a requirement that the rules be reviewed in the future. The proposed rules include a December 31, 2010, review requirement that does not require a new rulemaking, but only requires that the rules be reviewed for effectiveness. PSC Staff believes this as a reasonable requirement, given their content and complexity.
RESPONSE: In light of the fact that these rules are highly complex, establish an entirely new procedure and are likely to contain provisions that will need to be altered, added or deleted, the Commission finds it appropriate to leave in the date certain by which the rules will be reviewed. Therefore, no change will be made to the rule.

COMMENT: In subsection (8), which requires customer bills to identify the RAM, the Attorney General recommends that if the electric utility is operating under an incentive RAM, the electric utility shall also separately identify the incentive portion of the RAM on the customer's bill. This proposal will allow the consumer to understand what portion of the surcharge is for fuel and purchased power and what portion of the surcharge is going to be returned to the electric utility as profit.
RESPONSE: The Commission finds this suggestion would be misleading to consumers. Fuel and purchased power costs that are passed through in a surcharge will only reflect expenses of the utility. If off-system sales are passed through as part of a RAM, the proposed rule states that benefits to consumers must equal or exceed benefits to the utilities.

COMMENT: The Attorney General notes that (2)(E) refers to "an alternative base rate recovery mechanism." Nowhere in the proposed rule is the term defined and the Attorney General does not know what the Commission means when it uses that term.
RESPONSE: The Attorney General is correct; however, that phrase was included in the deletion of an entire sentence, so the concern is rendered moot.

COMMENT: Several commenters noted that the proposed rule appears to give the electric utility unilateral veto power over the Commission's determination as to what RAM is appropriate for use by the electric utility. The proposed rule provides in pertinent part : "...if the commission modifies the electric utility's RAM in a manner unacceptable to the electric utility, the utility may withdraw its request for a RAM and the components that would have been treated in the RAM will be included in base rate recovery mechanism if the commission authorizes the utility to do so."

The Attorney General asserts that this provision in the proposed rule will cause both practical and legal problems for the Commission. If this section is not deleted, the Staff, Public Counsel and other interveners will be required to file both a case with respect to the electric utility's proposed RAM and a case for placing the components that would have been included in the proposed RAM in the "base rate recovery" mechanism, whatever that mechanism may be. This will result in unneeded duplication of work and unnecessary complication of general rate case proceedings.

The PSC Staff notes that the language permits a utility to withdraw its rate adjustment mechanism, if it chooses to do so. AmerenUE asserts that that the electric utilities need to protect themselves from a RAM the Commission might adopt the first time for an electric utility. The Staff believes that AmerenUE's concern about an unreasonable RAM, which is the basis for AmerenUE's belief that the electric utilities require a veto power, is not well taken. The PSC Staff offers the following compromise: to change proposed rule language so that utilities can request a rate adjustment mechanism or base rate recovery in establishment of a RAM but can only choose to receive recovery in base rates versus recovery through a RAM if the Commission authorizes the utility to select this option in its order.

Multiple industrial commenters question the purpose of parties proposing alternatives to the Commission through experts, exhibits and other evidence of record if the Commission decision can simply be set aside by the utility. They believe that the Commission is empowered by the legislature to regulate public utilities in this state and to make decisions, with the force of law (provided they are lawful and supported by competent and substantial evidence on the whole record) as to what constitutes reasonable terms and conditions for the offering of public utility services. SB179 did not repeal public utility law in this state. Indeed, SB179 states that "Chapter 386, RSMo, is amended by adding thereto one new section..." Section 10 of SB179 states: Nothing contained in this section shall be construed as affecting any existing adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism currently approved and in effect." Moreover, Section 5 of SB179 provides: Once such an adjustment mechanism is approved by the commission under this section it shall remain in effect until such time as the commission authorizes the modification, extension, or discontinuance of the mechanism in a general rate case or complaint proceeding." The proposed rule provision directly contradicts the provisions of SB179 and must therefore not be retained.

RESPONSE: The Commission finds that the veto provision would create an undue burden on the rate case process and appears to be inconsistent with both SB179 and the remainder of Chapter 386. Therefore, it will be deleted.

COMMENT: AmerenUE notes that (7)(B)(2) purports to award interest at the utility's short-term borrowing rate plus one percent. AmerenUE further asserts that this is unlawful as SB179 specifically provides that any sums refunded under a RAM are to include interest at the utility's short-term borrowing rate – not more, not less. The Commission has no authority, absent specific statutory authority, to require monetary relief and consequently has no authority to require a higher rate of interest than specified by SB179.

RESPONSE AND EXPLANATION OF CHANGE: Refunds under a RAM shall include interest at the utility's short-term borrowing rate, as more fully set forth below.

COMMENT: The industrial users, particularly Noranda, seek to have included in a final rule rate design language that clarifies that the RAM will be designed so that the allocation among the different classes of customers reflects an allocation method or methods for costs based on the principle of cost causation and shall not be designed in a manner that will allocate costs or revenues among customers or customer classes in a manner that is inconsistent with the principle of cost causation. Moreover, some of the costs for purchased power may well include a demand component. As such it may become necessary to develop a rate design that separately addresses demand and energy charges. In the absence of an appropriate allocation of any demand related costs, the remedy must be to exclude the demand-related costs from recovery as a part of any fuel rate adjustment mechanism.

RESPONSE: At the present time the Commission cannot guarantee that rates will be designed in alignment with the goals of cost causation. While the Commission always keeps that goal in mind as it sets rates, it cannot overcome the Commission's overarching duty to set just and reasonable rates for all classes of consumers. A slavish devotion to one method of rate design will not help the Commission do its duty to all classes of ratepayers. Therefore, no change will be made.

COMMENT: Several commenters raised the concern that the existence of a RAM could allow utilities to earn a return above the commission-authorized rate of return. BioKyowa suggested that language be added to provide for adjustments when RAMs cause the utility to earn above its authorized return on equity. If the Commission finds it likely that the RAM may allow the utility to overearn it may include in the fuel adjustment clause a mechanism designed to periodically examine the utility's earnings (on a regulatory basis), and appropriately limit the collection of charges under the RAM. The Attorney General agrees that the legislature did not intend that the adjustment clauses authorized by Section 386.266 would allow an electric utility to earn in excess of its authorized return. AARP also expressed concern about the very real possibility of overearning. A FAC mechanism is a single-issue surcharge, and could allow rate increases even when overall costs are dropping. AARP urges the Commission to revise the rules to include meaningful consumer protections that are consistent with the comments of the various consumer stakeholders before a proposed rule is sent to the Secretary of State's office. MIEC also raises concerns that absent some mechanism for adjusting rates, there is a strong potential that utilities will over-earn and that rates will be too high. Section 386.266 requires that an adjustment mechanism be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." The Commission's statutory obligation pursuant to 393.130 RSMo is to establish just and reasonable rates. Rates that exceed the return on equity established by the Commission are not just and reasonable. Consistent with other statutes governing the Commission, Section 386.266 requires that the adjustment allow the utility a sufficient opportunity to achieve a fair, not excessive, return on equity. To address this situation and to comply with Subsection 4(1) of 386.266 and 393.130, MIEC proposes to add the following language to the fuel and purchased

power adjustment rule: In establishing, continuing or modifying the FAC, the Commission shall consider whether the presence of the FAC is likely to allow the utility to earn in excess of its authorized return on equity. If the Commission finds this to be the case, it may include in the fuel adjustment clause a mechanism designed to periodically examine the utility's earnings (on a regulatory basis), and appropriately limit the collection of charges under the FAC to the extent necessary to prevent the utility from earning in excess of its authorized return on equity as a result of revenues received through the FAC. The PSC Staff is of the opinion that the safeguards present in the rule, in conjunction with its general review authority, will be sufficient to guard against over-earnings. PSC Staff notes that the RAM relies on historical, not projected costs and requires a utility using a RAM to come in for a rate case at least every 4 years. That requirement does not now exist, permitting utilities whose costs are declining to overearn for years under present rate-of-return regulation. The PSC Staff is of the opinion that sufficient safeguards exist to prevent significant overearning.

RESPONSE: The Commission notes that the rule includes the following: "(13) 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, 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." The Commission finds that the safeguards established in the rule appear to be sufficient at this time. Therefore, no change will be made. As we have previously noted, we will watch carefully to determine whether additional safeguards need to be included in the rule.

COMMENT: The Attorney General asserts that there is an apparent conflict between (11)(C) and (13) of the proposed rule. What will the Commission do if as a result of an incentive RAM mechanism an electric utility is earning more than a fair rate of return? This is simply one more example of how Senate Bill 179 and these proposed rules further tilt the playing field in favor of the electric utility. On the other hand, AmerenUE believes the complaint process set out in the rule is unreasonable balance in favor of the complainant. It asserts that the Commission should not arbitrarily dictate the time within which it must adopt an appropriate schedule in an over-earnings complaint case. The complainant is not required to file the minimum filing requirements imposed on an electric utility that desires to initiate a general rate increase case. The complainant may not have filed a useable cost of service or class cost of service study, and the complainant may not have filed testimony supporting the complaint. Other technical problems concerning data, test years and other matters may be at issue. It is therefore not only impractical, but also inappropriate to fix, by rule, an artificial "deadline" by which the Commission must set a procedural schedule. The Commission should not tie its own hands by adopting a rule of general applicability without considering the individual circumstances that may exist in an individual complaint case alleging over-earnings by a utility.

The PSC Staff asserts that (13) clearly protects the rights of parties to file a complaint case on the grounds that a utility is earning more than a fair or reasonable

return. The rule requires that if such a complaint is filed, the Commission will issue a procedural schedule that includes a clear delineation of the case timeline no later than 60 days from the date the complaint is filed. In addition to these provisions, Staff notes that these rules include provisions that limit the time a rate adjustment mechanism can be in place without another rate proceeding, require annual true-ups, require prudence audits, require extensive monthly and quarterly reporting, include significant data sharing with other parties, only allow recovery of actually incurred costs versus projected or forecasted costs, and provide for Commission-ordered incentive or performance-based programs designed to improve the efficiency and cost-effectiveness of the electric utility's fuel and purchased power procurement activities. In summary, Staff believes that these rules provide for sufficient opportunities for the parties to develop reasonable rate adjustment mechanisms, monitor the performance of these mechanisms and revise these mechanisms if necessary.

RESPONSE: As to the Attorney General's assertions, it is clear to the Commission that (13) takes precedence over (11)(C). Further, it is not unreasonable, as AmerenUE asserts, to expect that a complainant in this new procedure, wherein parties have access to surveillance reports and other documents, will file a well-founded and well-documented complaint that could be expeditiously heard. Therefore, no change will be made.

COMMENT: The Attorney General is convinced that the prudence review and surveillance monitoring established in the rule are insufficient. The Attorney General believes that the Commission should articulate some prudence standard in its proposed rule. The Attorney General also asserts that (11)(C) binds the Commission to a certain decision even though circumstances can change over time. Noranda asserts that the provisions of the proposed rule regarding surveillance appear to be adequate and should not be diluted or weakened. Ideally, Noranda would prefer that surveillance be sufficiently specific to enable an interested party to readily identify any inappropriate fuel costs and excess earnings. While the proposed surveillance provisions may fall short of this ideal, Noranda is satisfied that the proposed surveillance provisions are reasonable so long as they are not weakened by additional modifications.

RESPONSE: As noted above, the PSC Staff is satisfied that the prudence reviews and surveillance procedures are adequate. Moreover, as we have stated above, we find that the ability to file a complaint in (13) supersedes (11)(C). Therefore, no changes will be made.

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 Staff's resolution to be reasonable, requiring no further action.

COMMENT: Some commenters believe these rules should, and others believe these rules should not, include a requirement that the utility have an approved Chapter 22 resource plan in place prior to approval of any rate adjustment mechanism. The PSC Staff believes that these rules should include requirements to report (i) on all supply- and demand-side resources, (ii) the dispatch of supply-side resources, (iii) the efficiency of supply-side resources and (iv) information showing the utility has a functioning resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service. These concerns prompted the drafting of proposed rule 3.161, Section (2), Paragraphs (O) through (Q) and Section (3), Paragraphs (P) through (R). While Staff believes the idea of having an "approved" resource plan as a prerequisite to having a rate adjustment mechanism may have some merit, Staff does not believe this to be reasonable as the resource planning rules do not contemplate "approval" for these purposes, resource planning is not necessarily tied to current fuel and purchased power procurement prudency, and the resource planning rules will likely be changed as a result of upcoming rulemaking efforts. Also, Staff believes the information being requested in the current proposed rules, along with additional discovery if needed, will provide parties with sufficient information to argue that a utility does not have an adequate planning process in place, if it utility does not.
RESPONSE: The Commission find the requirement for resource planning information in the Chapter 3 rules to be sufficient at present. Therefore no change will be made.

COMMENT: In its comments, the Attorney General suggests a RAM Threshold Test: "Prior to gaining the ability to utilize any of the RAM mechanisms authorized by Section 386.266 the electric utility shall be required to demonstrate to the Commission and the Commission must find after hearing that without the ability to use the RAM mechanisms authorized by Section 386.266 the electric utility would be unable to have an opportunity to achieve its Commission authorized rate of return." Section 386.266(4)(l) notes that any RAM authorized by the Commission must be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." If an electric utility already has a sufficient opportunity to earn a fair return on equity, it does not need a RAM. AmerenUE counters that SB179 does not contemplate, and in fact prohibits, an earnings test. An earnings test means the utility would effectively never be able to utilize a RAM when fuel costs are rising, unless the utility established, up to four times per year, that it is "under-earning." Implementation would require a full-blown rate review for each adjustment to the RAM. It would not allow the "periodic rate adjustments, outside of general rate proceedings, to reflect increases and decreases in prudently incurred fuel and purchased power costs" contemplated by SB179.
RESPONSE: The Commission finds that an earnings threshold for eligibility to use a RAM is contrary to the intent of the legislature, as articulated in SB179. Therefore, no such eligibility criteria will be included in the rule.

COMMENT: AmerenUE notes that only an electric utility may "make an application to the commission" for a RAM. §386.266.1, RSMo. The rules should be clarified, consistent with the statute, to provide that other parties to the general rate proceeding where a RAM is established or is to be continued can propose alternatives, but only if the electric utility proposes to establish or continue the RAM in the first place. (2)(F) and (3)(A) should be changed to clarify that the RAM and each periodic adjustment is to be based upon historical fuel and purchased power costs. The PSC Staff believes that the current provisions of Section 386.266 and these rules allow only electric utilities to propose establishment of a RAM. After the electric utility has a RAM in place, future rate proceeding filings to extend, modify or discontinue the rate adjustment mechanism will be subject to alternative proposals of other parties and the Commission's power to approve, modify or reject any of these proposals.

RESPONSE AND EXPLANATION OF CHANGE: The rule is clarified that only an electric utility may seek a RAM, and that periodic adjustments to a RAM are based on historical costs, as more fully set forth below.

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

PROPOSED RULE

4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms

(1) Definitions. As used in this rule, the following terms mean as follows:

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

(B) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs of net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power cost only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

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

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

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

(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;

(D) 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;

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

(G) Rate adjustment mechanism (RAM) refers to either a fuel adjustment clause or interim energy charge;

(H) 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.

(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 an electric utility 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 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 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.

(E) Any party to the general rate proceeding may oppose the establishment, continuation or modification of a 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) The RAM and periodic adjustments thereto shall be based on historical fuel and purchased power costs.

(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.

(H) Any party to the general rate proceeding may propose a cap on the change in the FAC, reasonably designed 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 opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect the cost or overall rates and charges of the petitioning electric utility.

(A) Any party to the general rate proceeding may oppose the discontinuation 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 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. 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 filed to implement the RAM must

conform to the RAM approved by the commission. Any RAM and periodic adjustments thereto shall be based on historical fuel and purchased power costs.

(B) The commission may take into account any change in business risk to the corporation resulting from discontinuance 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) 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 FAC rates shall not alter the processing timeline.

(5) 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.

(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.

(C) 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) 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.

(D) The staff shall examine and analyze the information filed 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. 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.

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.

(6) 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, or any period for which charges collected under the adjustment mechanism must be fully refunded. In the event a court determines that the adjustment mechanism is unlawful and all moneys collected are fully refunded as a result of such a decision, the electric utility shall be relieved of any obligation to file a 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 or prudence adjustments.

(7) 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 submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. 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.

1. 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.

2. 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) Disclosure on Customers' Bills. Any amounts charged under a RAM approved by the commission 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.

(9) 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 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.

(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) 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.

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

(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, 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) 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.

(13) 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, 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.

(15) 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.