EXHIBIT

Exhibit No.: _____
Issue(s): Fuel Adjustment Clause
Witness/Type of Exhibit: Mantle/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2014-0351

SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

Submitted on Behalf of the Office of the Public Counsel

EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2014-0351

March 24, 2015

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area.	))))	Case No. ER-2014-0351

AFFIDAVIT OF LENA MANTLE

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Lena Mantle, of lawful age and being first duly sworn, deposes and states:

1. My name is Lena Mantle. I am a Senior Analyst for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Lena M. Mantle
Senior Analyst

Subscribed and sworn to me this 24th day of March 2015.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 23, 2017
Cole County
Commission #13754037

Jerene A. Buckman
Notary Public

My Commission expires August 23, 2017.

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SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2014-0351

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Lena M. Mantle and my business address is P.O. Box 2230, Jefferson City, Missouri 65102. I am a Senior Analyst for the Office of the Public Counsel ("OPC").

Q. ARE YOU THE SAME LENA M. MANTLE THAT PROVIDED DIRECT AND REBUTTAL TESTIMONY IN THIS CASE?

A. Yes, I am.

PURPOSE AND RECOMMENDATIONS

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my surrebuttal testimony is to respond to the fuel adjustment clause ("FAC") rebuttal testimony of the Empire District Electric Company ("Empire") witnesses W. Scott Keith, Todd W. Tarter and Aaron J. Doll.

Q. HAVE OPC'S RECOMMENDATIONS REGARDING EMPIRE'S FAC CHANGED SINCE YOUR DIRECT TESTIMONY?

A. No, they have not.

Q. WOULD YOU SUMMARIZE OPC'S RECOMMENDATIONS REGARDING THE FAC IN THIS CASE?

A. OPC recommends:

1. The Commission discontinue Empire's FAC;

2. If the Commission grants Empire an FAC, certain modifications should be made to the FAC including:

A. The costs and revenues that Empire is allowed to include in its FAC be limited to costs and revenues that are clearly and distinctly defined by the Commission in this case;

B. Certain revenue accounts should not have a jurisdictional allocation factor applied to in the FAC tariff;

C. The costs and revenues included in the FAC should not change until the next general rate increase case; and

D. The Commission should change the incentive mechanism from 95%/5% to 90%/10%; and

3. If the Commission grants Empire an FAC, certain changes should be made to the FAC tariff sheets.

DISCUSSION OF THE IMPACT OF THE SOUTHWEST POWER POOL INTEGRATED MARKET

Q. IS THERE A COMMON THEME IN THE REBUTTAL TESTIMONY OF THESE EMPIRE WITNESSES THAT YOU WOULD LIKE TO ADDRESS?

A. Yes there is. There seems to be a common theme that, since the start up of the Southwest Power Pool ("SPP") Integrated Market ("IM"), Empire has entered into a new world in

where things have changed and Empire has little control over its fuel, purchased power and off-system sales.[1]

Q. IS THIS CORRECT?

A. They are partially correct. The SPP did start up its integrated market in March, 2014, and it was a change for Empire. Empire no longer dispatches its generation but instead bids its generation into the SPP market and then, Empire provides energy based on SPP directive.[2] What is incorrect is that this change has resulted in Empire having little control over the fuel and purchased power costs to meet the needs of its customers.

Q. IF SPP IS DETERMINING THE DISPATCH OF EMPIRE'S GENERATION UNITS, HOW DOES EMPIRE HAVE CONTROL OF FUEL AND PURCHASED POWER COSTS?

A. Empire is a vertically integrated utility that is required to provide reliable, safe energy to its customers at a reasonable rate. That did not change when the SPP integrated market began. Just as it was prior to the SPP integrated market, the best way for Empire to provide safe and reliable power at a reasonable rate is for Empire to have its own generation - the type and size built to efficiently meet the needs of its unique customers.

In addition, Empire determines the least-cost generation to meet its customers' needs; not the least-cost generation to meet SPP's needs. Empire is still required to do long-term resource planning to meet the future needs of its customers. This planning requires analysis of Empire's customers' energy and demand requirements and what

[1] Rebuttal testimonies of W. Scott Keith, page 7; Aaron J. Doll, page 8; and Todd W. Tarter, page 24.

resources (supply-side and demand-side) are necessary to meet these needs and meet its statutory requirements of safe and reliable service at a reasonable rate while taking into account the risks associated with each resource under various future scenarios. Statutory mandates, such as Missouri's renewable energy standards and federal environmental regulations, also are incorporated into this process. Integral in this resource planning process is the fuel type of both current and future generation.

Q. ARE THERE REASONS WHY EMPIRE SHOULD NOT FORGO ITS GENERATION AND TURN ONLY TO THE SPP INTEGRATED MARKET TO SUPPLY ALL OF ITS CUSTOMER'S ENERGY REQUIREMENTS?

A. Yes, there are at least a couple of reasons for Empire to build and own generation. The first is that Empire earns a return on its capital investments and its generation assets are its largest capital investments.

Another reason for owning generation is the tremendous risk of taking all of its energy from SPP. Not only is there the risk of fluctuating energy prices, but there is also the risk of unreliable power. Without its own generation, Empire's customers would be left to weather the swings in energy market prices and availability of energy in the SPP market. If the market clearing price is above Empire's bid into the SPP integrated market and Empire bids enough to meets its customer's needs, the market price does not impact Empire's customers. The amount paid to Empire for the energy that SPP directs Empire to provide is equal to the price paid to SPP by Empire for the energy consumed by its

[2] Direct testimony of Aaron J. Doll, pg 3.

customers netting to zero. If the market clearing price is below Empire's bid into the market, Empire's customers benefit from lower energy prices.

Q. DID EMPIRE LOSE ALL DAY-TO-DAY CONTROL OVER ITS FUEL COSTS WHEN THE SPP INTEGRATED MARKET STARTED UP?

A. No, it did not. Empire determines which of its generation plants to bid into the SPP integrated market. Empire still makes decisions regarding the purchasing of fuel for its generation. Empire still determines when maintenance outages at the plants it owns occur.

Q. WHEN SPP ACCEPTS EMPIRE'S GENERATION BID, DOES THAT MEAN THAT THE ENERGY GENERATED BY EMPIRE'S PLANTS FLOWS TO SPP?

A. No, it does not. The buying and selling of energy by SPP is purely a financial transaction. Energy flows according to the laws of physics. Energy still goes to the closest place that is drawing it just like it did before the SPP integrated market began operating.

Q. IS ALL OF THE ENERGY FOR WHICH EMPIRE IS CHARGED THROUGH SPP PURCHASED POWER?

A. No, it is not. Purchased power is the energy purchased, as needed or when less costly than what could be generated, from other utilities to meet the energy needs of Empire's customers. While Empire may be charged by SPP for energy, SPP is not generating the energy and therefore Empire is not obtaining energy from SPP. The majority of the energy needs of Empire's retail and wholesale customers is actually provided by Empire's own power plants and through Empire's long-term purchased power agreements. A financial transaction with SPP does not make this energy purchased power. To call this financial

transaction "purchased power" would improperly redefine the term and is inconsistent with the term "purchased power" as stated in §386.266 which grants the Commission the authority to allow Missouri electric utilities an FAC that flows changes in fuel and purchased power costs to their customers.

In contrast, when the cost of energy from another SPP member is lower than the cost of Empire's generation, Empire is actually purchasing energy generated by another electric utility. This is purchased power. The SPP market provides transparency and makes this less expensive energy easily available to Empire. SPP itself does not provide the energy.

Q. IS ALL OF THE ENERGY FOR WHICH EMPIRE RECEIVES PAYMENT THROUGH SPP OFF-SYSTEM SALES?

A. No, it is not. Off-system sales is energy generated and sold to other utilities above what was needed by the Empire's customers. The majority of the energy for which Empire receives payment through SPP is in fact provided by Empire's own power plants to meet the needs of its own retail and wholesale customers. To call the financial transaction for generation provided by Empire that is used by Empire's customers "off-system sales" would improperly redefine the term.

Only a small portion of the energy for which Empire receives payment through SPP is actually for energy provided to other electric utilities. It is this portion of energy, for which Empire receives payment through SPP that is above the requirements of Empire's customers, which is in reality off-system sales.

Q. IS IT YOUR TESTIMONY THAT THERE HAS BEEN NO CHANGE FOR EMPIRE SINCE THE SPP INTEGRATED MARKET STARTED?

A. No, it is not. The SPP integrated market is a change for Empire. However, Empire still controls the generation that it enters into SPP and has, to a large extent, the same control of the energy costs that are passed on to its customers as it had before the SPP integrated market.. As stated in Mr. Doll's direct testimony, the SPP integrated market should result in a more efficient commitment and dispatch of regional generation and operating reserves resulting in shared savings to Empire.[3] The SPP integrated market does not result in Empire losing control of the cost of fuel necessary to meet the energy requirements of its customers. The SPP costs that Empire has little control over are not fuel and purchased power costs and can be separately identified from fuel and purchased power costs, including transportation necessary to provide energy to Empire's customers.

Q. DOES THE SPP INTEGRATED MARKET REQUIRE A CHANGE IN EMPIRE'S FAC?

A. No, it does not. Fuel costs are still accounted for. Off-system sales can be determined. Purchased power can be determined. Transmission costs for the off-system sales and purchased power can be determined.[4]

Q. IS OPC RECOMMENDING THAT EMPIRE NOT BE ALLOWED TO RECOVER SPP COSTS?

[3] Direct testimony of Aaron J. Doll, pg 3.
[4] There are no transmission costs for purchased power and off-system sales from other SPP members.

A. No. SPP costs and revenues should be included in the cost-of-service recovered by permanent rates. But it is OPC's recommendation that most of the SPP costs and revenues not be included in the FAC. The only costs included in the FAC should be those costs necessary to receive purchased power and make off-system sales.

RESPONSE REGARDING COMPLETENESS OF FAC COSTS AND REVENUE INFORMATION PROVIDED

Q. THESE THREE EMPIRE WITNESSES STATE THAT EMPIRE HAS MET THE COMMISSION'S FAC FILING REQUIREMENTS OF 4 CSR 240-3.161(3)(H) AND (I) REGARDING THE PROVISION OF COMPLETE EXPLANATIONS OF COSTS AND REVENUES THAT EMPIRE IS PROPOSING BE INCLUDED IN ITS FAC.[5] DID THEIR REBUTTAL CHANGE OPC'S POSITION?

A. No, it did not.

Q. WHAT INFORMATION DID OPC RELY ON IN YOUR DIRECT TESTIMONY REGARDING WHAT "COMPLETE" MEANS?

A. OPC relied on the Commission's *Order of Rulemaking* in Case No. EX-2006-0472 which is attached to this testimony as Schedule LM-S-1. In the FAC rulemaking case, Union Electric Company d/ b/a AmerenUE requested a change from the word "complete" in the minimum filing requirement rules. The Commission's response, as follows, provides insight into the Commission's intention regarding the minimum filing requirements:

> The commission agrees that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. However, the commission

[5] Rebuttal testimonies of W. Scott Keith, pg 6; Aaron J. Doll, pg. 5; and Todd W. Tarter, pg. 20

> disagrees that "complete" means "perfect." By using "complete" the Commission means that which includes **every explanation and detail to allow a decision-maker to evaluate the response fully and on its face, without forcing it to resort to asking for additional explanations, clarification or documentation to reach a decision.** "Complete" means "not lacking in any material respect," which is a reasonable standard for filings. Moreover, the purpose of the rule is to alert requesting parties of the documentation and information necessary for the Staff to review and for the Commission to approve a rate adjustment mechanism (RAM) within the allotted time for a general rate case. If incomplete information is provided, the entities reviewing the documentation would be required to request further detail in order to evaluate the proposed RAM. The commission finds that "complete" is the most appropriate word to use to convey the amount of information or documentation that is required for review. Therefore, no change will be made.[6] (Emphasis added)

The purpose of the FAC minimum filing requirements is to provide every explanation necessary and the detail necessary to allow Commissioners and the parties to the case to evaluate the request for a continuance of an FAC fully and on its face, without forcing the Commission and the parties to the case to resort to asking for additional explanations, clarification or documentation to reach a decision.

Q. DID EMPIRE PROVIDE EVERY EXPLANATION NECESSARY AND THE DETAIL NECESSARY TO ALLOW THE COMMISSIONERS AND THE PARTIES TO THE CASE TO EVALUATE EMPIRE'S REQUEST FOR CONTINUANCE OF ITS FAC?

[6] Order of Rulemaking, Mo. Reg., Vol.31, No.23, p.2006 (Dec.1, 2006)

A. No, it did not. While I agree with Empire that it did provide greater explanation in this case than it has ever provided before, what it provided, as I explained in my direct testimony, does not meet the standard in the Commission's *Order of Rulemaking* as provided above.

Q. IS THIS AN ATTEMPT BY OPC TO MODIFY THE COMMISSION'S FAC RULE AS ASSERTED BY MR. TARTER?[7]

A. No, it is not. It is simply an effort to get Empire to provide the information that the rule requires and that the Commission needs to make an informed decision.

RESPONSE REGARDING INFORMATION NOT PROVIDED ON FAC COSTS AND REVENUES

Q. ARE MR. TARTER AND MR. DOLL CORRECT WHEN THEY STATE THAT INFORMATION REGARDING THE MAGNITUDE, UNCERTAINTY AND VOLATILIY OF FAC COSTS ARE NOT REQUIRED BY THE FAC RULES?[8]

A. Yes, they are. Information on the magnitude, uncertainty and volatility of FAC costs is not required by the FAC rules. However Commission rule 4 CSR 240-20.090(2)(C) provides the following instruction regarding what the Commission should consider when determining which costs components should be included in a rate adjustment mechanism ("RAM"), which in this case is an FAC:

> 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**

[7] Rebuttal testimony of Todd W. Tarter, page 20.
[8] Rebuttal testimonies of Todd W. Tarter, page 21 and Aaron J. Doll, page 7.

> **utility as a result of the inclusion 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. (Emphasis added)

Empire is requesting an FAC. Therefore, it should provide the information that is necessary for the Commission to make its determination. This includes the magnitude of each of the cost and revenue components that it is proposing be included in its FAC along with historical information on the cost and revenue components and Empire's expectations regarding each cost and revenue component. While there are statements made in testimony provided by Empire witnesses that FAC costs are volatile and uncertain, very little actual information has been provided on regarding the volatility of the FAC costs and no information has been provided to the Commission regarding *each cost and revenue component* for its consideration.

Because of this lack of information, along with the incomplete definitions of what cost and revenue components that Empire is requesting be including in its FAC, OPC is recommending that the Commission discontinue Empire's FAC.

Q. IS THE PROVISION OF THIS INFORMATION IN PREVIOUS CASES SUFFICIENT AS MR. TARTER OPINES[9] IN HIS REBUTTAL TESTIMONY?

A. No, it is not. The Commission rules require that the Commission should consider this information not just in applications to establish an FAC but also in applications to continue an FAC. The magnitude of costs and revenues changes between cases. Some costs become

[9] Rebuttal testimony of Todd W. Tarter, page 21

more certain and less volatile. For example, Mr. Tarter states in his direct testimony that fuel costs have stabilized since Empire first received an FAC. [10] Even so, he is asking the Commission to rely on information from previous cases, including the case that established Empire's FAC in 2008,[11] to make its determination that fuel costs are volatile and uncertain.

Q. IS THE PROVISION OF THE COSTS AND REVENUES IN MR. TARTER'S DIRECT TESTIMONY SCHEDULE TWT-2 SUFFICIENCT FOR THE COMMISSION TO MAKE A DETERMINATION ON THE MAGNITUDE, OF FAC COSTS AS MR. TARTER PROPOSES IN HIS REBUTTAL TESTIMONY?[12]

A. No, it is not. The costs and revenues in each line of this table are the aggregate of several cost and revenue components; some which are large and some which are small. Some may be certain. Some may be constant. This is information that the rules require the Commission to consider when determining what cost components should be included in Empire's FAC. This information has not been provided in this case.

Q. MR. DOLL STATES THAT INFORMATION WITH RESPECT TO UNCERTAINTY AND VOLATILITY OF TRANSMISSION COSTS IS INCLUDED IN HIS WORKPAPERS.[13] IS THE PROVISION OF THIS INFORMATION REGARDING MAGNITUDE, VOLATILITY AND UNCERTAINTY IN WORKPAPERS SUFFICIENT FOR THE COMMISSION TO MAKE ITS

[10] Direct testimony of Todd W. Tarter, page 9.
[11] Rebuttal testimony of Todd W. Tarter, page 21.
[12] Rebuttal testimony of Todd W. Tarter, page 21.

DETERMINATION OF WHICH COST COMPONENTS SHOULD BE INCLUDED IN EMPIRE'S FAC?

A. No, it is not. Empire's workpapers are voluminous and not readily available to the Commission. It is not the role of the other parties to the case to go through the workpapers and provide the information to the Commission. Empire is the party requesting the continuation of its FAC and it should be the party that presents the information that the Commission needs in its direct case when it requests continuance.

In addition to Mr. Doll stating that information can be found in workpapers, Mr. Tarter states that the parties can "deduce the magnitude of the costs and revenues involved.[14]" Neither the Commission nor the parties should have to "deduce" the magnitude of the costs and revenues involved. Empire is requesting the continuation of its FAC, so therefore it is Empire's burden to present this information to the Commission in its direct case.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes, it does.

[13] Rebuttal testimony of Aaron J. Doll, page 7.
[14] Rebuttal testimony of Todd W. Tarter, page 21.

rule, such as would justify the need for a specific sanctions provision. AT&T Missouri also points out that the commission already has a rule, 4 CSR 240-2.090(1), that allows the commission to impose appropriate sanctions for abuse of the discovery process.
RESPONSE AND EXPLANATION OF CHANGE: The commission will accept the suggestion. The provisions found elsewhere in the commission's regulations and in the controlling statutes regarding sanctions for abuse of the discovery process and disobedience of a commission order are sufficient and there is no need to include such a provision in this rule. Section (21) will be modified accordingly.

No other comments were received.

4 CSR 240-2.135 Confidential Information

(1) The commission recognizes two (2) levels of protection for information that should not be made public.

(A) Proprietary information is information concerning trade secrets, as well as confidential or private technical, financial, and business information.

(B) Highly confidential information is information concerning:

1. Material or documents that contain information relating directly to specific customers;

2. Employee-sensitive personnel information;

3. Marketing analysis or other market-specific information relating to services offered in competition with others;

4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;

5. Reports, work papers, or other documentation related to work produced by internal or external auditors or consultants;

6. Strategies employed, to be employed, or under consideration in contract negotiations; and

7. Information relating to the security of a company's facilities.

(3) Proprietary information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

(C) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as proprietary.

(4) Highly confidential information may be disclosed only to the attorneys of record, or to outside experts that have been retained for the purpose of the case.

(E) Subject to subsection (4)(B), the party disclosing information designated as highly confidential shall serve the information on the attorney for the requesting party.

(F) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as highly confidential.

(16) All persons who have access to information under this rule must keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission's staff or the Office of the Public Counsel from using highly confidential or proprietary information obtained under this rule as the basis for additional investigations or complaints against any utility company.

(21) A claim that information is proprietary or highly confidential is a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, proprietary or highly confidential.

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

ORDER OF RULEMAKING

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

4 CSR 240-3.161 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1063–1075). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Public hearings on this proposed rule and proposed rule 4 CSR 240-20.090 were held on August 22, 2006 in Kansas City; August 22, 2006, in Grandview; August 23, 2006, in St. Louis; August 23, 2006, in Overland; August 29, 2006, in Cape Girardeau; September 6, 2006, in Joplin; and September 7, 2006, in Jefferson City; the public comment period ended September 7, 2006. Timely filed written comments were received from seven (7) individuals and fourteen (14) groups or companies. A total of twenty (20) persons commented at the local hearings. Ten (10) 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 fifty percent (50%) of fuel

costs be passed on to consumers and that fifty percent (50%) be paid for by the utility and its shareholders. Industry commenters supported or opposed a cap on the RAM, supported or opposed the utility "veto" provision, supported or opposed apportioning fuel costs between base rates and a RAM, and generally opposed the transition provisions. Both industry and lay commenters opposed or supported the rule in its entirety, some asserting that it was unnecessary and within the commission's discretion to not adopt the rule and others asserting that the commission was required to adopt rules in response to a legislative mandate. Comments are available for review in their entirety at www.psc.mo.gov, choose EFIS, Agree to Terms, Resources, highlight Case No., and type in EX-2006-0472. No comments were made concerning the proposed forms, which are adopted without change.

COMMENT: Some commenters assert that rules that more simply set out the application process should be adopted instead of the detailed proposed rules, that the current level of complexity could cause potential delays in rate adjustments, and that the extensive monthly and quarterly reporting requirements in these rules are unduly burdensome and of limited benefit. PSC staff asserts that the requirements for detailed information are narrowly drafted and that only certain portions of the rules apply to certain types of filings, so some provisions are repeated in different sections, but it is much more convenient for the reader to have the rule sectionalized in this manner.
RESPONSE: The commission finds that the complexity of the proposed rule is necessary in light of the fact that it establishes a procedure that has not been used by the commission in rate cases in the past. The commission expects that it will be necessary in the future to amend these rules both to remove requirements that serve no purpose and to add provisions the need for which it cannot now anticipate. After the lengthy, collaborative process that has been used to develop this rule, the proposed rule represents this commission's best estimate of what will be necessary, useful information and what will not. Therefore, the rule will continue to contain its present level of detail until experience with it dictates change.

COMMENT: Some commenters believe these rules should not include a requirement that the rules be reviewed in the future. The proposed rules include a December 31, 2010, review requirement that does not mandate a new rulemaking, but only requires that the rules be reviewed for effectiveness. PSC staff believes this as a reasonable requirement, given their content and complexity.
RESPONSE AND EXPLANATION OF CHANGE: In light of the response to the preceding comment, the commission finds it appropriate to leave in the date certain by which the rules will be reviewed. Therefore, the recommended new (17) will be included to clarify that the rules in this chapter are subject to the same review time frame as those set forth in Chapter 20.

COMMENT: AmerenUE opposes the use of the word "complete" in sections (1), (2) and (3), which contain the filing requirements of the rule, for example, a requirement to provide a "complete explanation" or a "complete description." AmerenUE seeks to change "complete" as it appears throughout the rule to "reasonable." AmerenUE asserts that "complete" means "perfect," and that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. PSC staff disagrees, and asserts that the rule should require a "complete" explanation of the data provided.
RESPONSE: The commission agrees that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. However, the commission disagrees that "complete" means "perfect." By using "complete" the commission means that which includes every explanation and detail to allow a decision-maker to evaluate the response fully and on its face, without forcing it to resort to asking for additional explanations, clarification or documentation to reach a decision. "Complete" means "not lacking in any material respect," which is a reasonable standard for filings. Moreover, the purpose of the rule is to alert requesting parties of the documentation and information necessary for the staff to review and for the commission to approve a rate adjustment mechanism (RAM) within the allotted time for a general rate case. If incomplete information is provided, the entities reviewing the documentation would be required to request further detail in order to evaluate the proposed RAM. The commission finds that "complete" is the most appropriate word to convey the amount of information or documentation that is required for review. Therefore, no change will be made.

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

COMMENT: Some commenters want more specificity and definitions about what costs can be included in a RAM. PSC staff notes that certain inclusions or exclusions should be clearly stated, but feels that the rule should be flexible as to what costs the utility may seek to recover in a RAM, consistent with section 386.266, as parties may wish to consider different costs and revenues when dealing with different electric utilities.
RESPONSE: The commission finds that the present level of specificity is sufficient; no further specificity, beyond the exclusion discussed in the preceding comment, is warranted. Therefore, no change will be made.

COMMENT: PSC staff suggests that (1)(E) be clarified that a RAM can be either a fuel adjustment clause or interim energy charge.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds it reasonable to make such clarification, as set forth below.

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

COMMENT: In subsections (2)(B) and (3)(B), which require an example bill showing the RAM, the attorney general recommends that the following sentence be added at the end of the first sentence: "If the electric utility is operating under an incentive RAM the electric utility shall also show how it will separately identify the incentive portion of the RAM on the customers bill." This proposal will allow the consumer to understand what portion of the surcharge is for fuel and purchased power and what portion of the surcharge is going to be returned to the electric utility as profit.
RESPONSE: The commission finds this suggestion to be unworkable in that it will be difficult to discern what portion, if any, is not attributable to fuel costs or constitutes "profit" in the context of a RAM

and whether adding another line item to customer bills will be less confusing or more confusing. Therefore, no change will be made.

COMMENT: PSC staff suggests that (2)(F) and (3)(F) be clarified that an IEC only has a refundable portion to be trued-up, which is different from the FAC, although they are both types of RAMs.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will clarify the language in (2)(F) and (3)(F) as set forth below.

COMMENT: PSC staff suggests that in (3)(O) grammatical changes be made to make the plurals consistent and remove an extraneous "and."
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will correct the language in (3)(O) as set forth below.

COMMENT: PSC staff suggests that (4)(B) be clarified that an IEC only has over-collections to be refunded, which is different from the FAC, although they are both types of RAMs.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will clarify the language in (4)(B) as set forth below.

COMMENT: PSC staff suggests that (4) be corrected to refer to 4 CSR 240-20.090(2) rather than 4 CSR 240-20.090(3) and that (4)(A) be corrected to refer to 4 CSR 240-20.090(3)(C) rather than 4 CSR 240- 20.090(3)(D);
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will correct the references in (4) and (4)(A) as set forth below.

COMMENT: AmerenUE suggests that the surveillance reporting required in (5) be compiled and reported monthly but submitted quarterly, not monthly, as monthly submission is unduly burdensome and of limited benefit. More frequent reporting creates unnecessary costs, which increases rates. The PSC staff asserts that the monthly and quarterly reporting presently contained in the proposed rule will be of value and will be used by the parties in monitoring RAM operations and RAM credits and charges, true-up account monitoring, prudence audits and monitoring of utility earnings.
RESPONSE: In light of the fact that surveillance reports can be submitted electronically, the commission finds that, as the reports are compiled and maintained on a monthly basis, submitting them monthly rather than quarterly is not unreasonable. Therefore, no change will be made.

COMMENT: AmerenUE suggests that in (6), since surveillance monitoring reports will be available to parties other than staff and OPC, who have statutory confidentiality obligations, it is necessary that such reports be deemed "Highly Confidential."
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the reports should be declared highly confidential, subject to the standard procedure for challenging such classification. The commission is presently in the process of proposing a rule that will allow for classification of information without the issuance of a protective order, but will continue to use its standard protective order until that rule is final. The language in (6) will be modified to treat the surveillance reports as highly confidential as set forth below.

COMMENT: AmerenUE asserts that (6)(C) assumes that each utility budgets in the same manner, and that each utility prepares budgets based upon regulatory accounting principles as opposed to financial (GAAP) accounting principles, because the rule requires the budgeting report to conform to the surveillance report format. The budgeting process should not be driven by these surveillance reports.
RESPONSE: The commission finds that the requirement in (6)(C) does not require utilities to change the way they create their budgets, but simply requires that the budget be submitted in a uniform format for review. Therefore, no change will be made.

COMMENT: AmerenUE asserts that (7)(A)1.F. appears calculated to prevent inclusion of costs in the rate adjustment mechanism even if the utility has not received any insurance proceeds, and even if there has been no prudence disallowance. The true-up and prudence review provisions of SB 179 are designed to make after-the-fact adjustments, with interest, for items such as this. Before-the-fact preclusion of recovery of these costs is inappropriate and contrary to the statute, and is unnecessary to protect ratepayers, who will be fully protected by mandated true-ups and prudence reviews. Also, if additional requirements are to be imposed with regard to a particular FAC, those requirements should be spelled out in the order approving the RAM. The PSC staff asserts that the language in the rule is appropriate in that it requires the utility to identify any costs subject to insured loss or litigation and clarifies to the utility that such costs may not be recoverable as long as they are so subject. The PSC staff believes this serves as an appropriate incentive to the utility to vigorously pursue the funds tied up in litigation.
RESPONSE: The commission finds that the methodology put forth by the PSC staff creates a greater incentive to expeditiously resolve such matters than the required interest payments noted by AmerenUE. Therefore, no change will be made.

COMMENT: AmerenUE notes that (9)-(14) contain provisions that make those parties who participated in the case in which a RAM is created parties to any subsequent proceedings concerning that RAM and subsequent rate cases. AmerenUE does not object to discovery from those proceedings to be used in those subsequent proceedings, with updated responses. The principal change AmerenUE seeks is that in subsequent general rate proceedings, those desiring to be parties to that case need to become intervenors in that proceeding according to established commission rules. This is practical, fair and consistent with the proposed rule, in particular, (14), which contemplates that each general rate proceeding produces a new rate adjustment mechanism.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that in subsequent general rate proceedings, those seeking to participate must seek and be granted intervention to become parties in the subsequent rate case, since carrying over intervenor status from previous cases is administratively burdensome for both the utility and the commission. Therefore, (10)(A) will be amended accordingly, as fully set forth below.

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

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

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

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

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

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

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

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

(G) True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year, the true-up year may be less than twelve (12) months.

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

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

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

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

(O) A description of how responses to subsections (B) through (N) differ from responses to subsections (B) through (N) for the currently approved RAM;

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

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(3)(C);

(B) A complete explanation of how the over-collection or under-collections of the FAC or the over-collections of the IEC that the electric utility is proposing to discontinue shall be handled;

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

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

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

(17) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2010, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

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 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 1076–1082). 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 (10) 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 fifty percent (50%) of fuel costs be passed on to consumers and that fifty percent (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 SB 179, 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 SB 179, 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. SB 179 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 SB 179 appears to state that the PSC should be authorized additional staff to implement its provisions. However, the staffing level, which was two hundred eleven (211) for Fiscal Year 2005, was reduced to one hundred ninety-nine (199) for FY06 and further reduced to one hundred ninety-three (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 twenty-five (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 one hundred seventy-nine (179) out of one hundred eighty-six (186) legislators adopted SB 179, 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 twenty-nine (29) states in which utilities are traditionally (rate-of-return) regulated, only two (2) 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 SB 179, 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 SB 179 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 (4) 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 eighteen (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 (4) 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 fifty percent (50%) of fuel costs and that the utility and its shareholders be required to pay the other fifty percent (50%).

RESPONSE: These commenters may be confusing the proposal by other commenters that no more than fifty percent (50%) of fuel and purchased power costs be recovered in a RAM and that fifty percent (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 (3) 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 one hundred percent (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 an additional sentence be included in the definition of a "FAC" [4 CSR 240-20.090(1)(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 (50%) of these costs can be imbedded in base rates during a rate case (where one hundred percent (100%) of expected costs are now recognized), while fifty percent (50%) 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 AND EXPLANATION OF CHANGE: 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 SB 179, 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 (2) 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 (1) 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 SB 179 should include provisions for incentive and performance based programs. Section (11), consistent with section 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 SB 179 appears elsewhere in SB 179 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 be 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 (2) filings where the intent was that only one filing is mandatory and up to three (3) 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 (16), 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 rule is only proposed, any electric utility that files a general rate proceeding

thirty (30) days or more after the commission issued its notice of proposed rulemaking in this matter must follow the proposed requirements of section (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 (16) 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 section (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 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. SB 179 did not repeal public utility law in this state. Indeed, SB 179 states that "Chapter 386, RSMo, is amended by adding thereto one new section. . . ." Section 10 of SB 179 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 SB 179 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 SB 179 and must therefore not be retained.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the veto provision would create an undue burden on the rate case process and appears to be inconsistent with both SB 179 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 (1%). AmerenUE further asserts that this is unlawful as SB 179 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 SB 179.
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 overearnings. 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 four (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 (1) 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 an 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 overearnings 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 overearnings 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 sixty (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 utility's 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 4 CSR 240-3.161(2)(O)-(Q) and (3)(P)-(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 the utility does not.
RESPONSE: The commission finds 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 SB 179 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 (4) 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 SB 179.
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 SB 179. 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, section 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.

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:

(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 costs 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;

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Administrative and Financial Services
Chapter 261—School Transportation

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 304.060, RSMo 2000, the board amends a rule as follows:

5 CSR 30-261.025 Minimum Requirements for School Bus Chassis and Body **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 3, 2006 (31 MoReg 984–986). Changes have been made in the text of the *2007 Missouri Minimum Standards for School Buses* which is incorporated by reference. No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The State Board of Education received comments from two (2) directors of transportation and one (1) department employee on the proposed amendment.

COMMENT: Both sets of comments opposed the high back seats and barriers standard, stating daily operational problems for the bus driver to include students standing and kneeling in order to communicate with friends, and more opportunity for vandalism, bullying and instances of objects being thrown out of windows due to a decrease in the bus driver's line of vision.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Both sets of comments opposed the additional stop arm stating the second stop arm located on the rear of the bus will not prevent accidents and recommending instead rear-mounted warning systems which would flash directly in the line of vision of motorists following the bus.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Both sets of comments opposed the front and rear tow hooks being included in the 2007 Minimum Standards. Front and rear tow hooks are fairly standard throughout the state and most large buses are being towed from the rear so the tow companies don't have to disconnect the drive shafts. Tow hooks offer no increased "safety" for students on board the bus.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Both sets of comments opposed the transmission interlock standard based on cost and availability. The transmission interlock is not available as an option from the school bus manufacturers as of this date. Installation of the transmission interlock will add to the cost of the bus with no appreciable increase in safety, but an increase in the cost of maintenance.
RESPONSE AND EXPLANATION OF CHANGE: Pursuant to a vote of the Missouri Minimum Standards Technical Advisory Committee the decision was made to withdraw the proposed change to the transmission interlock that would have mandated the transmission interlock system rather than having it as optional equipment. The transmission interlock is currently not readily available as an option on large school buses so the cost is higher than the committee would like it to be for school buses. The State Board of Education carefully reviewed the comments and has made changes in the *2007 Missouri Minimum Standards for School Buses*, which is incorporated by reference.

COMMENT: One comment was received regarding side skirts extended. Proponents of this change say that the purpose of extending the side skirts is to reduce the chance of a child crawling or being knocked under a bus and being run over by the rear tires. In reality, those children who are run over by their own school bus too often are run over by the front wheels, not the back wheels. The change will not make buses safer, but will only serve to increase maintenance and repair costs.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Language pertaining to the stop arm signal was inadvertently left out of the *2007 Missouri Minimum Standards for School Buses*, which is incorporated by reference.
RESPONSE AND EXPLANATION OF CHANGE: Per the Missouri Minimum Standards Technical Advisory Committee's request, the language pertaining to the Stop Arm Signal has been included in the *2007 Missouri Minimum Standards for School Buses*, which is incorporated by reference.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 1—Organization; General Provisions

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 536.023, RSMo Supp. 2005, the commission amends a rule as follows: