

**Rules of
Department of Economic Development
Division 240 – Public Service Commission
Chapter 20 – Electric Utilities**

PROPOSED AMENDMENT

4 CSR 240-20.090 Fuel and Purchased Power Rate Adjustment Mechanisms

PURPOSE: This proposed amendment modifies the definitions, structure, operation, and procedures relevant to the filing and processing of request to allow fuel and purchased power costs and fuel-related revenues in an interim energy charge or a fuel adjustment clause which allow periodic rate adjustments outside general rate proceedings consistent with tariffs, commission orders and procedures that have been implemented since the effective date of the rule.

(1) This subsection defines various terms as used in this subsection and in subsection 4 CSR 240-3.161 Electric Utility Fuel and Power Rate Adjustment Mechanisms Filing and Submission Requirements:

(A) Accumulation period means the time period set by the commission in the general rate proceeding over which historical fuel and purchased power costs and fuel-related revenues are accumulated for purpose of determining the actual net energy costs (ANEC);

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

(C) Base energy costs means that part of the fuel and purchased power costs minus fuel-related revenues of a RAM that are included in base rates as determined by the commission in a general rate case and that when divided by kWh at the regional transmission organization's price node for the electric utility's load or, if the electric utility is not a participant in a regional transmission organization, when divided by kWh at the generator, equals the base factor (BF);

(D) Base factor (BF) means base energy costs per kWh at the regional transmission organization's price node for the electric utility's load or, if the electric utility is not a participant in a regional transmission organization, at the generator, which are established in a general rate proceeding, which may vary by season of the year, and which are included in the utility's fuel adjustment clause (FAC);

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

(F) FAC charge means the positive or negative dollar amount on each utility customer's bill that is equal to the applicable FAR times the monthly kWh, which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment (FPA) amount;

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

(H) Fuel adjustment rate (FAR) means the dollar per kilo-watt hour (kWh) rate used to determine the FAC charge on each utility customer's bill during a recovery period of a FAC.

The FAR shall be designed to recover from or return to customers the recovery period FPA. The FAR may be positive or negative;

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

1. The difference between the net base energy cost and the fuel and purchased power costs minus fuel-related revenues actually incurred during the corresponding accumulation period taking into account any incentive ordered by the commission;
2. True-up amount(s) ordered by the commission prior to or on the same day as commission approval of the FAR adjustment;
3. Interest;
4. Prudence adjustment(s) ordered by the commission since the last FAR adjustment; and
5. Any other adjustment ordered by the commission.

(J) 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. Fuel and purchased power costs may 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. Utilities to modify and share with Dana.

Comment [A1]: What is intent

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

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

(K) Fuel-related revenues means those revenues related to the generation or purchase of energy. Fuel-related revenues may include, but are not limited to, off-system sales, emission allowance sales, and renewable energy credits or certificates; if we get proceeds from sale of excess RECS, not used for RES compliance. What about costs of RECs? Talk to Claire. Should it say revenues should follow cost?

Comment [A2]: Remains an open item

(L) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission;

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

(N) Interim energy charge (IEC) means a mechanism that includes a refundable fixed amount billed through an interim energy rate (IER) established in a general rate proceeding that permits an electric utility to recover some or all of its fuel and purchased power costs separate from the fuel and purchased power costs included in its base rates. Base energy cost in the base rates is the floor of the IEC. The base energy cost plus the fuel and purchased power costs to be billed through the IER is the ceiling of the IEC. An IEC may or may not include fuel-related revenues and costs related to those revenues.;

(O) Net base energy costs means the product of the utility's base factor (BF) times the kWh used utility's actual net system input in kWh at the generator for the accumulation period using kWh at the same location used to establish BF, using the most recent kWh data available at the

~~time net base energy costs are being calculated. Net system input is that amount of energy, measured at a specified point on the system, needed to serve the utility's retail load obligation, including any applicable transmission or distribution losses from that specified point to the end use customer meter, and shall include appropriate adjustments for any behind the meter generation;~~

(P) Base rates mean the tariffed rates that do not change between general rate proceedings;

(Q) Rate adjustment mechanism (RAM) refers to either a commission-approved fuel adjustment clause or a commission-approved interim energy charge;

(R) Rebase base energy costs means the resetting of the base energy cost in the FAC equal to the base energy cost established as part of the total revenue requirement in each general rate proceeding in which the FAC is continued or modified;

(S) Recovery period means the period over which the FAR is applied to retail customer usage on a per kilowatt-hour (kWh) basis in an effort to recover the FPA. A recovery period is determined in the general rate case and shall not be longer than twelve (12) billing months;

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

(U) True-up amount means;

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

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

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

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

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

(2) Establishment, Continuation or Modification a RAM. An electric utility may only file to establish, continue or modify a RAM in a general rate proceeding. Any party in the general rate proceeding may seek to continue, modify or oppose the RAM. The commission shall approve, modify or reject such request only after providing the opportunity for a full hearing in the 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.

1. (A) The commission may approve the establishment, continuation or modification of a RAM and associated tariff sheets provided that it finds that the RAM it approves is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity and so long as the tariff sheets that implement the RAM conform to the RAM approved by the commission. During its determination of whether an electric utility should be allowed to establish, continue or modify a RAM, the commission may consider such factors that in its judgment have a bearing on the request

(B) The commission may take into account any change in business risk of the utility resulting from establishment, continuation or modification of the RAM in setting the electric utility's

allowed return on equity in any general rate proceeding, in addition to any other changes in business risk experienced by the electric utility.

(C) The electric utility shall include in its initial notice to customers regarding the general rate case, a commission approved description of how its proposed RAM shall be applied to monthly bills. The description shall include the electric utility's estimate of the amount of the proposed change in rates arising from changes in the base energy costs and the estimated impact on a typical residential customer's bill resulting from the proposed change to the base energy costs.

(D) Any party to the general rate proceeding may oppose any RAM and/or may propose alternative RAMs for the commission's consideration.

(E) The RAM, including the fuel adjustment rates, shall be based on historical fuel and purchased power costs and fuel-related revenues.

(F) The electric utility shall comply with the filing requirements in 4 CSR 240-3.161(2) in conjunction with a request to establish a RAM and 4 CSR 240-3.161(3) in conjunction with a request to continue or modify a RAM.

(G) For a FAC, the base energy costs will be the fuel and purchased power costs minus fuel-related revenues for the general rate proceeding as determined by the commission. The electric utility must rebase base energy costs whenever it makes an application to establish, continue or modify a RAM. The base energy costs shall also be used to set base rates. However, non-FAC fuel-related costs and revenues may be included in the revenue requirement used in setting base rates.

(H) The electric utility must conduct heat rate tests and/or efficiency tests on each of the electric utility's nuclear and non-nuclear steam generators, heat recovery steam generators (HRSGs), steam turbines and combustion turbines within twenty-four (24) months preceding the filing of a request to establish, continue or modify a RAM.

1. The results of those tests shall be provided to the staff, Office of Public Counsel (OPC) and to intervenors in the general rate proceeding as part of the workpapers it provides in connection with the filing of its direct case filing and shall be presented in a table format by generating unit, unit type, rated megawatt (MW) output rating, the numerical value of the latest heat rate test and the date of the latest heat rate test; and

2. The electric utility shall provide a statement in its testimony where the heat rate test results, the actual heat rate test documentation, the heat rate testing schedule for all generating units and the heat rate test procedures can be found in its workpapers.

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

1. When the electric utility will file for a true-up; and
2. How and when the true-up amount will be recovered.

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

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

(3) Discontinuance of a RAM. The tariff sheets that define and implement a RAM shall only be discontinued and withdrawn after the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect 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 fuel-related revenues. If the commission finds that the utility is opportunistically seeking to discontinue the RAM for any of these reasons, the commission shall not allow the RAM to be discontinued, and shall order its continuation or modification. 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 tariff sheets filed to implement the RAM must conform to the RAM approved by the commission. Any RAM and periodic adjustments to the FAR shall be based on historical fuel and purchased power costs and fuel-related revenues.

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

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

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

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

(4) Requirements for Electric Utilities That Have a RAM. If the commission grants, modifies or continues an electric utility's RAM, the electric utility shall, uUpon 30 days prior written notice to the electric utility, provide for review by staff at its corporate headquarters, or some other place mutually agreed upon by the electric utility and staff, a copy of each and every nuclear fuel, coal, natural gas and fuel transportation contract (to the extent related to generation of electricity), ~~the utility's hedging policies and the utility's internal policy for participating in a~~ Regional Transmission Organization (RTO) ancillary services market (if applicable), including every amendment and modification to each contract or policy, that was in effect during a particular period of the operation of the RAM for the electric utility.

(5) Periodic Changes to Fuel Adjustment Rates. An electric utility that has a FAC shall file proposed tariff sheet(s) to adjust its FARs following each accumulation period. The FARs shall be designed to bill the electric utility's customers, in the aggregate, the FPA if the FPA is positive, or return the FPA to the utility's customers if the FPA is negative.

(A) Determinations of imprudence amounts, true-up amounts and any corrections shall be made in separate cases in EFIS, not in a FAR adjustment case.

(B) The electric utility shall initiate a new case with an ER designation for each periodic adjustment of its FARs.

(C) An electric utility with a FAC shall file an adjustment to its FARs within two (2) months of the end of each consecutive twelve (12) month period after the effective date of the FAC. It may also file up to three (3) additional adjustments to its FARs within each twelve (12) month

time period, with the timing and number of such additional filings to be determined in the general rate proceeding establishing, continuing or modifying the FAC.

(D) The electric utility must be current on its submission of its Surveillance Monitoring Reports required by section (11) and its monthly reporting requirements of 4 CSR 240-3.161(5).

(E) Staff shall review 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 FARs is in accordance with the provisions of this rule, section 386.266, RSMo and the FAC mechanism established in the utility's most recent general rate proceeding. Within thirty (30) days after the electric utility files testimony and tariff sheets to adjust its FARs, the staff shall submit a recommendation regarding its examination and analysis to the commission.

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

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

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

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

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

(H) If the staff, OPC or other party which receives, pursuant to 4 CSR 240-2.135, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes that the information required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the FAC has not been submitted in compliance with that rule or order, it shall notify the electric utility within ten (10) business days of the electric utility's filing of tariff sheets to adjust the FARs and identify the information required and not submitted in compliance with that rule or order. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was in compliance with the requirements of 4 CSR 240-3.161 and the commission order establishing the FAC, within ten (10) business days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission.

1. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase the FARs shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing timeline for the adjustment to increase the FARs. For good cause shown the commission may further suspend this timeline.

2. Any delay in providing sufficient information in compliance with 4 CSR 240-3.161 and the commission order establishing the FAC in a request to decrease the FARs shall not alter the processing timeline.

(6) True-Ups of RAMs. The purpose of a true-up case is to accurately and appropriately remedy any over-collection or under-collection during a recovery period, including the interest accrued at the utility's short-term interest rate.

(A) Determinations of imprudence, adjustments to FARs and any corrections shall be made in separate cases, not in a true-up case.

(B) The electric utility shall initiate a new case with an EO designation for each true-up of its RAM.

(C) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (11) and its monthly reporting requirements as required by 4 CSR 240-3.161(6) at the time that it files its true-up of its RAM in order for the commission to process the electric utility's requested true-up of any under-collection.

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

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

(F) Within sixty (60) days of the electric utility's true-up filing the commission shall either:

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

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

(G) If the staff, OPC or other party which receives, pursuant to 4 CSR 240-2.135, the information that the electric utility is required to submit 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.

1. While the commission is considering the motion to compel, the processing timeline for the determination of the true-up amount shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided

shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

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

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

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

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

(8) Prudence Reviews Respecting RAMs. A prudence review of the fuel and purchased power costs and fuel-related revenues subject to the RAM shall be conducted by staff no less frequently than at eighteen (18)-month intervals.

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

(B) The staff shall file notice within ten (10) days of starting its prudence review and shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after initiating its prudence review. Parties to the prudence review proceeding shall have ten (10) days after the staff files its recommendation to request a hearing. The commission shall issue an order not later than thirty (30) days after the staff files its recommendation if no party requests a hearing.

1. If the staff, OPC or other intervenor 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) Disclosure on Customers' Bills. Any amounts charged under a commission-approved RAM shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to the commission for the commission's approval in the general rate proceeding establishing, modifying or continuing the RAM.

(10) 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 as determined through the periodic conduct of Missouri jurisdictional system loss studies. When the electric utility initially seeks authority to use a RAM, the end of the twelve (12)-month period of actual data collected that is used in its Missouri jurisdictional system loss study must be within the twenty-four (24) months immediately preceding the date the utility files its general rate case requesting a RAM. When the electric utility seeks to continue or modify its RAM, the end of the twelve (12)-month period of actual data collected that is used in its Missouri jurisdictional system loss study must be no earlier than four (4) years before the beginning of the twelve (12)-month period the utility uses for developing the general rates it proposes the Commission approve in that general rate proceeding.

~~(11) Submission of Surveillance Monitoring Reports. Each electric utility with an approved RAM shall submit to staff, OPC and parties as defined in 4 CSR 240 3.161(10)(A) a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240 3.161(6).~~

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

~~(B) If the electric utility also has any other approved cost recovery mechanism(s) which requires submission of surveillance monitoring reports, the electric utility shall submit a single Surveillance Monitoring Report that incorporates the requirements of the surveillance monitoring report requirements for all cost recovery mechanisms.~~

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

Comment [A3]: Move, as appropriate, to Chapter 3 – and do the same for other rules that reference surveillance (e.g., MEEIA, RES)

(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 and/or off-system sales activities.

(A) The incentive mechanisms or performance-based programs may or may not include some or all components of base energy costs, designed to provide the electric utility with incentives to

improve the efficiency and cost-effectiveness of its fuel and purchased power procurement and/or off-system sales 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. Customer rates shall include the cost of an incentive mechanism or performance-based program in any time period above what they would be without the incentive mechanism or performance-based program.

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

(123) Pre-Existing Adjustment Mechanisms, Tariffs and Regulatory Plans. The provisions of this rule shall not affect:

(A) Any adjustment mechanism, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to _____; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to _____.

(14) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that the electric utility is acting in violation of its approved RAM tariff sheets or on the grounds that an electric utility's rates have become unjust and unreasonable, 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 its rates have become unjust and unreasonable. If a complaint is filed on the grounds that an electric utility is acting in violation of its approved RAM tariff sheets or on the grounds that it rates have become unjust and unreasonable, the commission shall issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed.

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

AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and 386.266, RSMo Supp. 2005. Original rule filed June 15, 2006, effective Jan. 30, 2007.*

**Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 386.266, RSMo 2005; and 393.140, RSMo 1939, amended 1949, 1967.*