

**PRUDENCE REVIEW OF COSTS AND REVENUES
IN THE FUEL ADJUSTMENT CLAUSE
OF
UNION ELECTRIC COMPANY, d/b/a AMEREN
MISSOURI
RELATED TO AMEREN MISSOURI'S CONTRACTS
WITH WABASH VALLEY POWER ASSOCIATION
AND AMERICAN ELECTRIC POWER OPERATING
COMPANIES**

October 1, 2009 through June 20, 2010

**MISSOURI PUBLIC SERVICE COMMISSION
STAFF REPORT**

FILE NO. EO-2012-0074

*Jefferson City, Missouri
October 28, 2011*

**** Denotes Highly Confidential Information ****

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Staff Report on Prudence Review of Costs and Revenues Related to Ameren Missouri's Sales Contracts with Wabash Valley Power Association and American Electric Power Operating Companies

Executive Summary

Staff of the Missouri Public Service Commission ("Staff") has limited its review in this report to Union Electric Company, d/b/a Ameren Missouri's ("Ameren Missouri") treatment under its fuel adjustment clause ("FAC") of the costs and revenues associated with its contracts to sell energy to Wabash Valley Power Association ("Wabash") and American Electric Power Operating Companies ("AEP") during the period October 1, 2009, through June 20, 2010. Staff will file another report in this file by February 29, 2012, of its comprehensive prudence review of Ameren Missouri's actions under its fuel adjustment clause for the period October 1, 2009, through May 31, 2011. Staff will not repeat in that report its review, analysis and recommendation presented here.

In this report Staff recommends the Missouri Public Service Commission ("Commission") order Ameren Missouri to refund to its customers in its next fuel and purchased power ("FPA") rate adjustment the aggregate sum of ** _____ **, plus interest accrued at Ameren Missouri's short-term borrowing rate from May 31, 2011 until the amount is refunded. The basis for Staff's recommendation is its conclusion that Ameren Missouri was imprudent for not including in its FAC calculations for adjustment of its FPA rates all the costs and revenues associated with its contracts to sell energy to Wabash and AEP during the period October 1, 2009, through June 20, 2010.

Staff's conclusion regarding Ameren Missouri's prudence with respect to the Wabash and AEP contracts mirrors the conclusion it reached during its FAC prudence review of Ameren Missouri's treatment of the costs and revenues associated with the same contracts during the period March 1, 2009, to September 30, 2009. Staff filed its report for that prudence audit period in File No. EO-2010-0255. There the Commission found Ameren Missouri imprudent and ordered it to refund to its customers \$17,169,838 plus interest accrued at Ameren Missouri's short-term borrowing rate until the \$17,169,838 is refunded.

Background

The Commission first authorized Ameren Missouri to use a FAC in Ameren Missouri's 2008 general electric rate case, File No. ER-2008-0318. (At that time Ameren Missouri was doing business as Ameren UE.) In Ameren Missouri's next two general electric rate cases, File Nos. ER-2010-0036 and ER-2011-0028 the Commission approved and ordered modifications to that FAC.

Missouri statute and Commission rule, Section 386.266.4(4) RSMo (Supp. 2011) and 4 CSR 240-20.090(7), respectively, require prudence reviews of an electric utility's FAC at no less frequently than eighteen-month intervals. This is Staff's second prudence review of Ameren Missouri's FAC. Staff is filing its second prudence review of Ameren Missouri's FAC in two separate reports. In this first report in this file, Staff presents its analysis of how Ameren Missouri treated costs and revenues related to its contracts to sell energy to Wabash and AEP during the third, fourth, and fifth accumulation periods of Ameren Missouri's FAC. In its second report, to be filed by February 29, 2012, Staff will present its analysis of Ameren Missouri's treatment of all other expenses and revenues associated with its FAC for the entirety of its third, fourth, fifth, sixth, and seventh accumulation periods (October 1, 2009 through May 31, 2011).

Ameren Missouri's third FAC accumulation period was October 1, 2009, through January 31, 2010. The fourth accumulation period was February 1, 2010, through May 31, 2010. The fifth accumulation period was June 1, 2010, through September 30, 2010. However, Staff's first report is limited to the period October 1, 2009, through June 20, 2010, because new rates took effect on June 21, 2010, that changed Ameren Missouri's FAC and how the costs and revenues associated with the Wabash and AEP contracts were treated¹.

Ameren Missouri's FAC tariff language that was, and is, in effect for the period October 1, 2009, through June 20, 2010, is the same FAC tariff language that was subject to dispute in File No. EO-2010-0255. On pages 17 to 22 of its April 27, 2011, *Report and Order* in that case the Commission stated the following:

¹ Change referred to is the inclusion of "N" factor in the Original Sheet Nos. 98.8 through 98.14

Decision

The language from Ameren Missouri's tariff that is in question is as follows:

Off-System Sales shall include all sales transactions (including MISO revenues in FERC Account Number 447), excluding Missouri retail sales and long-term full and partial requirements sales, that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission.

As explained more fully in the findings of facts section of this report and order, that definition of off-system sales determines what revenue is to be run through the fuel adjustment clause subject to a 95/5 sharing mechanism. Ameren Missouri is able to keep 100 percent of revenue that the definition excludes from off-system sales, which explains the company's desire to exclude revenue derived from the Wabash and AEP sales from off-system sales.

Some confusion was injected into the hearing by Staff's misreading of part of the tariff language. That misreading derives from a confusingly placed comma in the definition. Staff would read the second part of the definition as if there were no comma between "sales" and "that." Thus, the definition would state "excluding Missouri retail sales and long-term full and partial requirements sales that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission." In other words, the numbered provisions at the end of the sentence would modify "long-term full and partial requirement sales". However, there is a comma before "excluding" and after "sales", and that creates a parenthetical expression that modifies "all sales transactions" at the start of the sentence.

The intended meaning of the definition would be clearer if it were rearranged as follows:

Off-System Sales shall include all sales transactions (including MISO revenues in FERC Account Number 447) that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission, excluding Missouri retail sales and long-term full and partial requirements sales.

Aside from grammatical construction, the correctness of that meaning of the definition is clear because if the numbered provisions at the end of the sentence are taken to be limitations on the exclusion rather than the inclusion, then all sales transactions would be unlimited and off-system sales would be defined as including transactions that are associated with non-Missouri

jurisdictional generating units. That would not be a reasonable interpretation of the definition.

No one questions the exclusion of Missouri retail sales from the definition of off-system sales, but the intended meaning of the exclusion of “long-term full and partial requirements sales” is much less clear. In interpreting the meaning of the phrase “long-term full and partial requirements sales,” the Commission must look first to the plain and ordinary meaning of those words and may look beyond those words only if their meaning is ambiguous. In the context of Ameren Missouri’s sales of electric power to Wabash and AEP, those words are ambiguous. They are not defined anywhere in the tariff and they do not have a plain and ordinary meaning outside the tariff. Therefore, the Commission will attempt to ascertain the intent of Staff, Ameren Missouri, and the other parties when they agreed to this tariff language through their stipulation and agreement.

The parties presented arguments about the tariff language as if there were two provisions to be interpreted, “long-term” and “full and partial requirement sales.” However, the tariff language can best be understood as a single provision, a description of a type of sale that is to be excluded from the definition of off-system sales.

The type of sale to be excluded is described in the Edison Electric Institute and FERC Form 1 definitions as “requirements service.” That is the type of sales contract that Ameren Missouri had entered into with municipal utilities, cooperatives, and other investor owned utilities over the years. It is also a type of sales contract that has become much less common in recent years, as the wholesale electric market has become less regulated.

The key phrase in the definition of “requirements service” is the requirement that the supplier plans to provide such service “on an ongoing basis (i.e. the supplier included projected load for this service in its system planning).” As the wholesale electric market has changed in recent years, Ameren Missouri has moved away from requirements service contracts, leaving only the remnant municipal requirements contracts, which Ameren Missouri intends to not renew when their terms expire.

The tariff’s definition of long-term full and partial requirements sales was not limited to municipal customers, but by the time the parties were negotiating the language of the tariff, those were the only such existing customer contracts that would fall within the definition. That also explains the statement that Lena Mantle testified she heard from a representative of Ameren Missouri during those negotiations. Since the municipal contracts were the only ones in existence at that time that would fall within the definition, it is reasonable to conclude that Ameren Missouri’s employees would name those contracts when asked about the definition of long-term full and partial requirements sales.

Thus, the tariff’s definition of off-system sales was intended to exclude requirements sales of the type exemplified by the existing

requirements sales to the municipalities. The question then becomes, are the Wabash and AEP contracts the sort of requirements sales that fall within the intent of the tariff?

The Commission concludes that the Wabash and AEP contracts are not long-term full or partial requirements contracts as defined by Ameren Missouri's tariff. They simply do not have the characteristics to qualify as such contracts. Ameren Missouri calls them such, but it must stretch the definition beyond the breaking point to do so.

If Ameren Missouri's definition were accepted, nearly any sales contract of over one-year duration would qualify as a long-term full or partial requirements contract that could be excluded from the fuel adjustment clause. Ameren Missouri would be able to choose unilaterally to define an off-system sale out of the fuel adjustment clause and thereby increase its profits at the expense of its ratepayers. Such a broad definition would render the tariff's definition of off-system sales nearly meaningless and would make the fuel adjustment clause extremely one-sided in a way that was not intended by the Commission or by the parties to the stipulation and agreement that presented that tariff language to the Commission for approval. Ameren Missouri describes its contracts with Wabash and AEP as long-term full or partial requirements contracts, but, to paraphrase MIEC's witness, Maurice Brubaker, calling a dog a duck does not make it quack, and calling Ameren Missouri's contracts with Wabash and AEP long-term full or partial requirements contracts does not make them so.

Ameren Missouri also argues that it did not act imprudently in entering into the Wabash and AEP contracts and that nothing it did has harmed ratepayers. On that basis, it argues that the Commission has no basis to find the imprudence necessary to require it to refund money to its ratepayers.

Ameren Missouri bases that argument on the fact that had there been no ice storm and Noranda had not been forced to curtail its production and resulting purchases of electricity, the money Noranda paid to Ameren Missouri would not have been flowed through the fuel adjustment clause and the company would not have had to share 95 percent of that revenue with its ratepayers. Ameren Missouri contends that the revenue it received from the Wabash and AEP contracts merely replaced the revenue it lost from Noranda and therefore, its ratepayers are no worse off than they would have been had there been no ice storm.

Ameren Missouri's argument would however deprive its ratepayers of the benefit of the bargain implicit in the Commission's approval of the fuel adjustment tariff language proposed in the stipulation and agreement among the parties to the rate case, ER-2008-0318. The bargain implicit in the approved fuel adjustment clause is that ratepayers will pay more to help the company when the utility's fuel costs rise or offsetting revenue from off-system sales drop. On the other hand, ratepayers will benefit from decreased rates if fuel costs drop or offsetting revenue from off-system sales increase.

Here offsetting revenue from off-system sales, as those revenues were defined in the tariff, increased and ratepayers should have benefited in the amount of \$17,169,838. However, Ameren Missouri sought to deprive ratepayers of that benefit by branding the Wabash and AEP contracts as long-term full or partial requirements contracts when they do not qualify as such under the terms of the company's tariff. In doing so, Ameren Missouri acted contrary to the requirements of its tariff and therefore acted inappropriately.

The facts here are not materially different from those Staff and the Commission reviewed and considered in File No. EO-2010-0255. In its *Report and Order* in that case the Commission provided the following summary on page 2:

Summary

This order determines that Union Electric Company d/b/a Ameren Missouri acted imprudently, improperly and unlawfully when it excluded revenues derived from power sales agreements with AEP and Wabash from off-system sales revenue when calculating the rates charged under its fuel adjustment clause.

Review Standard

In evaluating prudence, Staff reviews for whether a reasonable person making the same decision would find both the information the decision-maker relied on and the process the decision-maker employed was reasonable based on the circumstances at the time the decision was made, i.e., without the benefit of hindsight. The decision actually made is disregarded and the review is an evaluation, instead, of the reasonableness of the information the decision-maker relied on and the decision-making process the decision-maker employed. If either the information relied upon or the decision-making process employed was imprudent, then an examination is made to determine whether the imprudent decision caused any harm to ratepayers. Only if an imprudent decision resulted in harm to ratepayers, will Staff recommend the Commission find the utility imprudent.

Analysis

The facts and circumstances of Ameren Missouri's energy sales contracts to Wabash and AEP during the period October 1, 2009, through June 20, 2010, are no different than they were for the period March 1, 2009, to September 30, 2009. They were the subject of the Commission's Report and Order in File No. EO-2010-0255 for the period March 1, 2009, to

September 30, 2009, where the Commission found Ameren Missouri was imprudent for excluding the costs and revenues associated with its Wabash and AEP energy sales contracts from its FAC.

Conclusion

Based on its review, Staff concludes Ameren Missouri was imprudent for not including all costs and revenues associated with certain sales of energy to Wabash and AEP during the period of this prudence review in determining adjustments to its FPA rates. With regard to the Wabash and AEP contracts, the facts here are not materially different from those that existed for File No. EO-2010-0255, only the period of time under Ameren Missouri's FAC is different. Staff concludes the Wabash and AEP energy sales during this period should have been treated as off-system sales for purposes of Ameren Missouri's FAC, and, therefore, a total refund amount of \$** _____ ** (\$** _____ ** from accumulation period 3, \$** _____ ** from accumulation period 4, and \$** _____ ** from period 5 (June 1, 2010 through June 20, 2010) which includes interest through May 31, 2011 and should be made to Ameren Missouri electric customers as a result of Ameren Missouri's imprudence.

Recommendation

Staff recommends that the Commission order Ameren Missouri to refund the amount of \$** _____ ** in FPA filing number 8 which is scheduled for December 1, 2011, with a preceding recovery period of February 1, 2012 to September 30, 2012, following a Commission *Order* in this case, and include interest at the Company's short-term borrowing rate from June 1, 2011 through the time the refund is made. The result will then be used in determining the new FPA rates used for calculating the Ameren Missouri FAC charge billed to customers.

Staff Expert: Dana Eaves

Attachments: Schedule 1
Schedule 2
Background and Credentials

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Second Prudence)
Review of Costs Subject to the)
Commission-Approved Fuel)
Adjustment Clause of Union Electric)
Company d/b/a Ameren Missouri.)

File No. EO-2012-0074

AFFIDAVIT OF DANA E. EAVES

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Dana E. Eaves, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Report on Prudence Review of Costs in the Fuel Adjustment Clause of Union Electric Company d/b/a Ameren Missouri Related to Ameren Missouri's Contracts with Wabash Valley Power Association and American Electric Power Operating Companies, to be presented in the above case; that the information in the Staff Report was provided to him; that he has knowledge of the matters set forth in such Staff Report; and that such matters are true to the best of his knowledge and belief.



Dana E. Eaves

Subscribed and sworn to before me this 27th day of October, 2010.





Notary Public

CASE PROCEEDING PARTICIPATION

DANA E. EAVES

PARTICIPATION		TESTIMONY
COMPANY	CASE NO.	ISSUES
Empire District Electric Company	EO-2011-0285	Prudency Review
AmerenUE	EO-2010-0255	Prudency Review
Empire District Electric Company	EO-2010-0084	Prudency Review
Missouri American Water Company	WR-2008-0311	<i>Pension and Other Post-Retirement Employee Benefits Costs, Annual Incentive Plan Pay-out Based Upon Meeting Financial Goals and Customer Satisfaction Survey, Labor and Labor-Related Expenses, Rate Case Expenses, Insurance Other than Group, and Waste Disposal Expense</i>
Empire District Electric Company	ER-2008-0093	Fuel and Purchased Power, Fuel Inventories, FAS 87 (pension), FAS 106 (OPEBS), Expenses and Regulatory Assets, Off System Sales, Transmission Revenue, SO2 Allowances, Maintenance Expense
Laclede Gas Company	GR-2007-0208	Accounting Schedules Reconciliation
Empire District Electric Company	ER-2006-0315	Direct - Jurisdictional Allocations Factors, Revenue, Uncollectible Expense, Pensions, Prepaid Pension Asset, Other Post-Employment Benefits Rebuttal - Updated: Pension Expense, Updated Prepaid Pension Asset, OPEB's Tracker, Minimum Pension Liability
Missouri Gas Energy (Gas)	GR-2004-0209	Direct – Cash Working Capital, Payroll, Payroll Taxes, Incentive Compensation, Bonuses, Materials and Supplies, Customer Deposits and Interest, Customer Advances and Employee Benefits Surrebuttal – Incentive Compensation

PARTICIPATION		TESTIMONY
COMPANY	CASE NO.	ISSUES
Aquila, Inc. d/b/a Aquila Networks-MPS & L&P (Natural Gas)	GR-2004-0072	Direct - Payroll Expense, Employee Benefits, Payroll Taxes Rebuttal – Payroll Expense, Incentive Compensation, Employer Health, Dental and Vision Expense
Aquila, Inc. d/b/a Aquila Networks-MPS (Electric)	ER-2004-0034	Direct - Payroll Expense, Employee Benefits, Payroll Taxes Rebuttal – Payroll Expense, Incentive Compensation, Employer Health, Dental and Vision Expense
Aquila, Inc. d/b/a Aquila Networks-L&P (Electric & Steam)	HR-2004-0024	Direct - Payroll Expense, Employee Benefits, Payroll Taxes
Osage Water Company	ST-2003-0562 WT-2003-0563	Direct - Plant Adjustment, Operating & Maintenance Expense Adjustments
Empire District Electric Company	ER-2002-0424	Direct - Cash Working Capital, Property Tax, Tree Trimming, Injuries and Damages, Outside Services, Misc. Adjustments
Citizens Electric Corporation	ER-2002-0297	Direct - Depreciation Expense, Accumulated Depreciation, Customer Deposits, Material & Supplies, Prepayments, Property Tax, Plant in Service, Customer Advances in Aid of Construction
UtiliCorp United Inc, d/b/a Missouri Public Service	ER-2001-672	Direct - Advertising, Customer Advances, Customer Deposits, Customer Deposit Interest Expense, Dues and Donations, Material and Supply, Prepayments, PSC Assessment, Rate Case Expense

PROCEEDING PARTICIPATION

DANA E. EAVES

Schedule 2

PARTICIPATION – No direct testimony filed or NON-Case (Informal) proceeding		
COMPANY	CASE or Tracking No.	ISSUES
RDG Sanitation	SA-2010-0096	Certificate Case
Mid Mo Sanitation	SR-2009-0153	Informal General Rate Case
Highway H Utilities, Inc.	SR-2009-0392 and WR-2009-0393	Informal General Rate Case
Osage Water Company	SR-2009-0149 WR-2009-0152	General Rate Case Lead Auditor
Hickory Hills	SR-2009-0151 WR-2009-0154	General Rate Case Lead Auditor
Missouri Utilities	SR-2009-0153 WR-2009-0150	General Rate Case Lead Auditor
Roy L. Utilities	QS-2008-0001 and QW-2008-0002	General Informal Rate Case
IH Utilities, Inc.	QW-2007-0003	General Rate Case
W.P.C. Sewer Company	QS-2007-0005	Rate Case Lead Auditor
West 16 th Street Sewer Company, Inc.	QS-2007-0004	Rate Case Lead Auditor

PARTICIPATION – No direct testimony filed or NON-Case (Informal) proceeding		
COMPANY	CASE or Tracking No.	ISSUES
Gladlo Water & Sewer Company, Inc.	QS-2007-0001 and QW-2007-0002	Rate Case Lead Auditor Supervised: Kofi Boateng
Taneycomo Highlands, Inc.	QS-2006-0004	Rate Case Lead Auditor
Empire District Electric	QW-2005-0013	Informal General Rate Case
Cass County Telephone Company	TO-2005-0237	Cash Flow Analysis, LEC Invoices, Bank Reconciliations, Expense Analysis
LTA Water Company	WM-2005-0058	Merger Case with Missouri American Main Issue: Plant Valuation Lead Auditor
Noel Water Company, Inc.	QW-2005-0002	Rate Case Lead Auditor Supervised: Kofi Boateng
Suburban Water and Sewer Company, Inc.	QW-2005-0001	Rate Case Lead Auditor Supervised: Kofi Boateng
Osage Water Company	WC-2003-0134	Customer Refund Review
Noel Water Company, Inc.	QW-2003-0022	Rate Case Lead Auditor Supervised: Trisha Miller
AquaSource	WR-2003-0001 and SR-2003-0002	Plant in Service, Construction Work in Progress, Payroll, Depreciation Expense
Warren County Water and Sewer Company	WC-2002-155	General
Environmental Utilities, LLC	WA-2002-65	General
Meadows Water Company	WR-2001-966 and SR-2001-967	Expense Items

DANA EAVES
CAREER EXPERIENCE

Missouri Public Service Commission, Jefferson City, Missouri

Utility Regulatory Auditor III April 23, 2003– Present

Utility Regulatory Auditor II April, 2002 – April, 2003

Utility Regulatory Auditor I April, 2001 – April, 2002

Midwest Block and Brick, Jefferson City, Missouri

Accountant December 2000 – March 2001

CIS/Accounting Assistant July 2000 – December 2000

Practice Management Plus, Inc., Jefferson City, Missouri

Vice President Operations October 1998 – May 2000

Capital City Medical Associates (CCMA), Jefferson City, Missouri

Director of Finance March, 1995-October, 1998

ADDITIONAL EXPERIENCE

Wright Camera Shop/Sales 1987-1995

Movies To Go, Inc/Store Manager 1984-1987

Butler Shoe Corp./Store Manager 1982-1984

Southeastern Illinois College/Student 1979-1982

Kassabaum's Bicycle Shop/Store Manager 1977-1979

EDUCATION

Bachelor of Science, Business Administration; Emphasis Accounting (1995)

COLUMBIA COLLEGE, JEFFERSON CITY, MO