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Mr. Kevin Thompson
Public Service Commission Staff
P.O. Box 360
Jefferson City, MO 65102


Re: **Case No. EW-2011-0139 – OPC’s preliminary comments on the Staff’s proposed changes to the FAC rules (Rules 3.161 and 20.090)**

Dear Kevin,


This letter is to provide OPC’s preliminary comments regarding the Staff’s proposed changes to the Commission’s Fuel Adjustment Clause (FAC) rules. OPC’s comments below provide an initial reaction to the Staff’s proposed changes rather than a comprehensive analysis. As this review process progresses, and as OPC better understands the reasons for the proposed changes, OPC will provide more detailed comments and suggestions.


4 CSR 240-3.161

1. **Proposed Purpose Section.** The purpose of the rule should not reference the amendment since the purpose of the rule, even following any amendment, will apply to the entire rule and not just the amended portions.
2. **“Complete” descriptions and explanations.** OPC is concerned with the proposal to change the required supporting information to be filed with applications to establish, continue or modify a RAM. Specifically, OPC is concerned wherever the Staff proposes to eliminate the word “complete” and replace it with the word “detailed” in several places (proposed **3.161(3)(E), (F), (G), (I), (J), (L), (M), (N), and (O)**). A “complete” description was specifically addressed by the PSC in its Order of Rulemaking as being very important to the rule. OPC recognizes that requiring a “detailed” explanation is also helpful, and for that reason, OPC proposes that the rule should use both terms, and require “detailed and complete” descriptions and explanations. 


3. **Costs and Revenues.** OPC supports changing the rule to require detail at the sub-account level (proposed 3.161(3)(I)). In addition to this, the rule should be further changed to provide additional complete and detailed explanations of the following for each cost: 

- Why each cost and revenue should be included in the RAM;
- Each cost incurred and revenue received by the company for each month of the proposed test year;
- The expected magnitude of each cost and revenue for the next four (4) years;
- The reason for volatility in each cost and revenue;
- The reason for uncertainty in each cost and revenue; and
- An explanation of the company's ability to manage each cost and revenue.


4. **Fuel-related revenue.** Staff's proposed 3.161(3)(J) would require a detailed explanation of each "fuel-related" revenue that is to be considered. OPC proposes eliminating the term "fuel-related" to require the company to explain all revenue the company proposes to be considered (in case the company seeks to include non-fuel-related revenue) 

5. **Permanent rates.** OPC does not fully understand the language in proposed 3.161(3)(N), where it states that if the company is proposing to include fuel and purchased power costs in rates, that it will provide a detailed explanation of its methodology used to allocate costs to specific customer classes in the permanent rates "and in any subsequent rate adjustments during the term of the proposed RAM." Is this contemplating a rate adjustment to the permanent rates 


6. **Risk per Customer Class.** OPC suggests an edit to Staff's proposed 3.161(3)(Q) to require a detailed explanation of risks per customer class by changing (Q) as follows: "A detailed explanation of each risk to each of the electric utility's Missouri retail customer classes resulting from implementation of the proposed RAM..." This is to address the fact that risks are different for different classes.


7. **Submission vs Filing.** OPC proposes changing the Staff's proposed 3.161(3)(R) by replacing the word "submitting" in the second sentence to "filing" since these are requirements for filings to be made with the Commission. 


8. **Supply-side and Demand-side Resources.** Staff's proposed 3.161(3)(R) would require the utility to provide the supply-side and demand-side resources used to meet load in the four years following "establishment of a RAM." OPC proposes adding "continuation or modification" of a RAM since everything required in subsection (3) would also apply to continuing or modifying a RAM.

9. **Chapter 22 Filings.** OPC seeks clarification of Staff's proposed 3.161(3)(T)1, where it requires the company to make additional filings if the Commission finds the company's Chapter 22 filings to be less than fully compliant. Does this mean any Chapter 22 filings the company has made, or the last triennial filing and updates since then 


OPC also proposes modifying Staff's proposed 3.161(3)(T)1(A) and 2(A) by adding the words "continued or modified" where the company is required to explain why the RAM should

be “established” since everything required in subsection (3) would also apply to continuing or modifying a RAM. 

10. **Differences from Current RAM.** OPC proposes a new subsection (A) to Staff’s proposed 3.161(4) that states, “*A detailed description of how the proposed RAM differs from the currently effective RAM including a list of all costs and revenues that it is seeking to add to its FAC and all costs and revenues that it is seeking to remove from its FAC.*” Staff, OPC, other parties, and the Commission, should not have to speculate on any proposed changes. 


11. **Monthly Report Account Detail.** OPC proposes a modification to the Staff’s proposed 3.161(5)(K)1 and 2, to contemplate that the Commission may require the company to present costs and revenues in a format other than account and sub-account (for example, if the Commission orders the company to provide information by activity code). This could be accomplished by adding “*..and any other designation ordered by the commission*” at the end of subsections 3.161(6)(K)1 and 2. 


The same addition should also be made to 3.161(5)(M), so that the sentence reads, “*A detailed description of each account, ~~and~~ sub-account and any other designation ordered by the commission where each fuel and purchased power cost or fuel-related revenue is recorded.*”

12. **RTO Information.** OPC proposes additions to the Staff’s proposed 3.161(5)(S) to reflect that companies may participate in more than one RTO. The new subsection would state: 

- (S) Each revision to the electric utility’s internal policy for participating in:
 - 1. A Regional Transmission Organization (RTO) ancillary services market, if the RTO in which the electric utility participates has such a market;
 - 2. RTO energy markets by RTO;
 - 3. RTO capacity markets by RTO;
 - 4. Financial swaps or other financial-only transactions, if the commission allowed such financial transaction to be included in the electric utility’s RAM.

13. **Fuel Adjustment Rate (FAR) Changes.** OPC proposes changes to the Staff’s proposed 3.161(8)(A) (Periodic Change to Fuel Adjustment Rate) to require more information and explanation in the company’s direct testimony filing (rather than relying on the proposed tariff sheets to explain the changes). OPC proposes the following for (A):


- (A) Pre-filed testimony that shall include:
 - 1. The proposed FARs;
 - 2. The change in the FARs;
 - 3. The impact of the proposed FARs on the monthly bill of the electric utility’s typical residential customer, together with the definition of typical residential customer used to determine that impact;
 - 4. An explanation that details the factors which contributed to the FPA amount; 
 - 5. An explanation of each RAM cost that changed as compared to the prior accumulation period and the reason for the change;

6. An explanation of each RAM revenue that changed as compared to the prior accumulation period and the reason for the change;
7. If hedging costs are allowed in the RAM, either a statement that there have been no new, removal of, modification of, or clarification of a hedging policy of the electric utility, or, if there has been new, removal of, modification of or clarification of a hedging policy of the electric utility, a complete explanation of the change, including monetary impact for the review period and expected impact in future periods will be provided;
8. Either a statement that there has been no change in the electric utility's internal policy for participating in a RTO markets, or if there has been a change in the electric utility's internal policy for participating in a RTO markets, a complete explanation of the change, including monetary impact for the review period and expected impact in future periods will be provided;
9. A list of possible RTO charges and RTO revenues that are expected within the next twelve (12) months; and
10. A separate list of every change in RTO charges and revenues with the effective date of each. 


The last two subsections may be necessary only if the rules allowed for changes between rate cases.


Under Staff's proposed **3.161(8)(B)1**, OPC proposes adding a third subsection (C) that states, "*The actual fuel transportation costs of the types of fuel costs designated in the FAC;*" This change recognizes that these costs may be greater than the actual fuel costs, and therefore, should be provided.

Lastly, OPC proposes adding a subsection (I) to **3.161(8)** that states, "*Extraordinary costs passed through the electric utility's FAC, if any, due to such costs being an insured loss or subject to reduction due to litigation or for any other reason.*" (This occurred with respect to certain nuclear costs for Ameren).

14. **RAM True Ups.** OPC proposes adding a subsection to **3.161(9)(B)**, making it the new **3.161(9)(B)1**, and renumbering the rest accordingly. The new language should state, "*Any revision to the calculation of the net base energy cost for the accumulation period.*" This is currently done by Ameren when it gets "final" kWh from MISO. 

4 CSR 240-20.090


1. **FAC and FAR Definitions.** OPC proposes the following edit to the Staff's proposed **20.090(1)(F)** definition of FAC charge: "*FAC charge means the positive or negative dollar amount on each utility customer's bill ~~that is equal to the applicable FAR time the monthly kWh,~~ which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment (FPA) amount.*" The deleted language restricts the FPA to always being recovered on a kWh basis. The same issue also appears in **20.090(1)(H)** and in **20.090(1)(S)**, which tie the FAR to kWh. 

2. **Net Base Energy Cost Definition.** The Staff's proposal, 20.090(1)(O), defines "net base energy costs" as "*the product of the utility's base factor (BF) times the utility's actual net system input in kWh at the generator for the accumulation period.*" OPC proposes that this definition should be clarified because it does not designate a particular point in time for measurement. MISO may make changes up to 105 days after the energy is used. 


3. **True-Up Amount Definition.** For the true-up period definition, 20.090(1)(U)1, will the utility revise its FPA at this point in time to take into account final kWh numbers from its RTO? Also, this definition should be clarified by changing "...FAC charges for a recovery period..." to "...FAC charges billed during a recovery period..."

4. **Balance of Interests.** OPC proposes adding language to 20.090(2)(A) to reflect that the Commission is to balance the utility's opportunity to earn a fair return with the public interest and any increased risk to ratepayers.

5. **Remedy for Non-Compliance.** OPC proposes a change to the Staff's proposed 20.090(2)(G) by adding a remedy or consequences should the utility not meet the minimum filing requirements. Such language could state, "*In addition to other remedies provided by law, the commission may reject the utility's request for, continuation of, or modification of a RAM if it finds that the utility has not complied with 4 CSR 240-3.161(3) in its application to establish a RAM, and 4 CSR 240-3.161(3) and (4) in conjunction with an application to continue or modify a RAM.*"


6. **Holding ANEC Costs Steady.** OPC proposes adding a new provision, to be the new 20.090(2)(I) (and renumbering the remainder of the subsection). The new provision would hold costs and revenues in the RAM constant between rate cases by stating, "*The costs and revenues included in the ANEC shall not differ from the costs and revenues approved in the last general rate proceeding in which a RAM was approved for the utility.*" 


7. **True-Up Calculation.** OPC proposes a change to Staff's proposed 20.090(2)(J), by adding a sub paragraph that provides, "*How the true-up amount will be determined including but not limited to any recalculation of the FPA;*" This language is important to the tariff sheet if there is a recalculation due to the late finalization of kWh by the RTO.

8. **Balance of Interests.** OPC proposes similar language in 20.090(3)(A) for discontinuing a RAM, as discussed above, that includes a balancing of interests between the utility's interest in an opportunity to earn a fair return, with the public interest and any increased risk on ratepayer. 

9. **Remedy for Non-Compliance.** OPC proposes adding remedy/consequence language to 20.090(3)(E) for non-compliance with the filing requirements. Such language could state, "*In addition to other remedies as provided by law, the commission may reject the utility's request to discontinue a RAM if it finds that the electric utility has not complied with 4 CSR 240-3.161.*"

10. **EFIS Notice.** OPC proposes a change to the Staff's proposed 20.090(4)(B) to require a more specific submission requirement that can be tracked through EFIS. Accordingly, the language "*Notify the manager of the commission's energy resource analysis section of every new nuclear fuel...*" should be replaced with "*Notify staff through EFIS of every new nuclear fuel...*"

11. **Periodic Changes.** The Staff's proposed 20.090(5)(A) states that determinations of imprudence amounts, true-up amounts, and any corrections shall be made in separate cases in EFIS, not in a FAR adjustment case. Does this include changes to the FPA due to "final" RTO kWh settlement numbers? 

12. **No Interest if Withholding Information.** OPC proposes new language to 20.090(5)(H)1 stating that utilities should not earn interest due to its withholding of information. This could be addressed by adding a sentence to the end of the paragraph that states, "*Interest will not be accrued on the FPA from the time that the commission receives a motion to compel until the time that the commission orders the utility to provide the requested information.*" This same change should also appear as a new subsection at 20.090(6)(H)3 as applied to true-ups 

We appreciate this opportunity to provide Staff with feedback. Please let me know if you or anyone at Staff has questions or concerns.

Sincerely,

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