Exhibit No.:	
Issues:	Proper FAC Treatment of Requirements Contracts
Witness:	Dana E. Eaves
Sponsoring Party:	MO PSC Staff
Type of Exhibit:	Direct/Rebuttal Testimony
File No.:	EO-2012-0074
Date Testimony Prepared:	May 14, 2012

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION

DIRECT/REBUTTAL TESTIMONY

OF

DANA E. EAVES

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI

FILE NO. EO-2012-0074

Jefferson City, Missouri
MaY 2012

** <u>**Denotes Highly Confidential Information**</u> **

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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 his oath states: that he has participated in the preparation of the following Direct/Rebuttal Testimony in question and answer form, consisting of 21 pages of Direct/Rebuttal Testimony to be presented in the above case, that the answers in the following Direct/Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.

Dana E. Eaves

Dane E. Eaves

Subscribed and sworn to before me this 14th day of May, 2012.

SUSAN L. SUNDERMEYER
Notary Public - Notary Seal
State of Missouri
Commissioned for Callaway County
My Commission Expires: October 03, 2014
Commission Number: 10942086

Susan L. Sundermeyer

Notary Public

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OF

DANA E. EAVES

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI

FILE NO. EO-2012-0074

Q. Please state your name and business address.

A. Dana E. Eaves, P.O. Box 360, Jefferson City, MO 65102.

Q. By whom are you employed and in what capacity?

A. I am a Utility Regulatory Auditor for the Missouri Public Service Commission ("Commission" or "PSC") in the Energy Unit.

Q. Have you previously filed testimony before the Commission?

A. Yes. Please see Schedule DEE-1 and Schedule DEE-2, attached to this testimony, for the list of cases in which I have previously filed testimony or reports.

Q. Are you the same Dana E. Eaves who participated in the prudency review and preparation of the Public Service Commission Staff's ("Staff") *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* ("Staff Report" or "Report") and the proposed recommendation in this case?

A. Yes, I am. On October 28, 2011, the Staff filed its Report attached as Schedule DEE-3 (NP) and DEE-4 (HC). In that 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 ** $26,342,791 **[1], 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 [(Fuel Adjustment Clause)] 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.

Q. Are you also the same Dana E. Eaves who participated in the prudency review of Ameren Missouri's contracts with Wabash Valley Power Association ("Wabash" or "WVPA") and American Electric Power Operating Companies ("AEP")for the period March 1, 2009 through September 30, 2009, that Staff presented in its *Prudence Review of Costs Related to the Fuel Adjustment Clause for the Electric Operations of Union Electric Company, d/b/a AmerenUE* filed August 3,1 2010, in File No. EO-2010-0255?

A. Yes, I am.

Q. Did Ameren Missouri contest Staff's proposed prudency adjustment for the AEP and Wabash prudency issue in File No. EO-2010-0255?

A. Yes, and the Commission issued a *Report and Order*.

Q. Did you file testimony in File No. EO-2010-0255 related to the AEP and Wabash prudency issue?

A. Yes I did.

[1] This number was designated as Highly Confidential in the Staff's report filed on October 28, 2011. Ameren Missouri made this number public in the hearing in Case No. EU-2012-0027.

Q. Was the AEP and Wabash prudency issue in that case any different than the AEP and Wabash prudency issue now?

A. No, not other than the period reviewed. Staff's adjustment in this case simply reflects the remaining costs and revenues associated with the AEP and Wabash contracts for the current review period. Staff is recommending this amount should be refunded with the appropriate interest to Ameren Missouri's customers in Ameren Missouri's next Fuel and Purchased Power Adjustment ("FPA") following an order from the Commission in this case.

Q. What did the Commission say in its *Report and Order* in File No. EO-2010-0255?

A. The Commission provided a summary on page 2, which follows:

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.

Q. What is the purpose of your direct/rebuttal testimony in this case?

A. I not only present Staff's responses to the direct testimonies of Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or "Company") witnesses Lynn M. Barnes ("Ms. Barnes"), Jaime Haro ("Mr. Haro") and Gary S. Weiss ("Mr. Weiss"), but I also present additional matters to support Staff's prudency disallowance recommendation. In particular, I address the following points:

- An overview of Ameren Missouri's FAC.
- The Company's imprudently excluded costs and the revenues related to the AEP contract and the Wabash contract from its FPA calculations for the 3rd, 4th, and 5th accumulation periods.

AMEREN MISSOURI'S FUEL ADJUSTMENT CLAUSE

Q. Why does Ameren Missouri have a Fuel Adjustment Clause?

A. As I explained in my direct/rebuttal testimony in File No. EO-2010-0255, as part of Case No. ER-2008-0318, the Commission first authorized Ameren Missouri to use a FAC on January 27, 2009. Ameren Missouri's FAC was, and still is, designed to allow Ameren Missouri to recover or refund under-collection or over-collection of prudently incurred fuel and purchased power costs less off-system sales revenue in a timely manner outside of a general rate case. Ameren Missouri's FAC then had the following formula, the factors of which are defined in its FAC tariff sheets:

$$FPA_{(RP)} = [\ [\ (CF+CPP-OSSR-TS-S) - (NBFC \times S_{AP})\ ] \times 95\% + I+R]/S_{RP}$$[2]

Q. What does this formula have to do with Staff's proposed prudency adjustment?

A. $FPA_{(RP)}$ is the adjustment for each accumulation period that is included in the FPA charge (now called a "Fuel Adjustment Charge") on Ameren Missouri customers' bills. Staff is proposing a prudency disallowance that affects the CF (Fuel Costs) factor and the OSSR (Off System Sales Revenue) factor used in setting the $FPA_{(RP)}$ for the 3rd, 4th and 5th recovery periods.[3]

Q. Were Ameren Missouri's current FAC tariff sheets in effect over the time period that you reviewed for this prudence audit?

A. No. The tariff sheets that were in effect over the time period of this prudence audit are attached as Schedule DEE-5.

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[2] See Schedule DEE-5 for complete explanation of components used in formula.

[3] Adjustments to the Fuel and Purchased Power Adjustment factor based on the October 1, 2009, to January 31, 2010, February 1, 2010, to May 31, 2010, and June 1, 2010, to September 30, 2010.

Q. Do Ameren Missouri's FAC tariff sheets in Schedule DEE-5 define the various components of what should or should not be included in the OSSR factor of the FPA equation?

A. Yes, on schedule 5, page 98.3 of Ameren Missouri's FAC tariff sheets (DEE-5), OSSR is defined as follows:

> OSSR = Revenue from Off-System Sales allocated to Missouri electric operations.
> 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.

WABASH AND AEP PRUDENCY ISSUE

Q. Did Ameren Missouri request the Commission authorize it to use a FAC?

A. Yes, I also presented the following history in File No. EO-2010-0255. On April 4, 2008, in File No. ER-2008-0318, Ameren Missouri filed tariff sheets consisting of electric rate schedules designed to increase its "gross annual electric revenues by approximately $251,000,000, exclusive of applicable gross receipts, sales, franchise or occupational fees or taxes." Contained within this filing was the Company's request for authorization to employ a fuel and purchased power cost recovery mechanism to comply with rule 4 CSR 240-20.090.

Q. Did the Commission authorize Ameren Missouri to use a FAC in that case?

A. Yes. As I mentioned earlier in this testimony and in my previously filed testimony in File No. EO-2010-0255, the Commission approved Ameren Missouri's request to implement a FAC on January 27, 2009, with its *Report and Order* issued in Case No. ER-2008-0318. The Commission later modified Ameren Missouri's FAC in Ameren Missouri's next two general electric rate cases, File Nos. ER-2010-0036 and ER-2011-0028.

Q. Did a January 28, 2009 ice storm damage Ameren Missouri's transmission and distribution system?

A. Yes. Much of Ameren Missouri's transmission and distribution system in southeast Missouri was severely damaged.

Q. Did Ameren Missouri describe that storm shortly after it occurred?

A. Yes. On page 2 of its *Application for Rehearing and Motion for Expedited Treatment* filed on February 5, 2009, in File No. ER-2008-0318, Ameren Missouri, then doing business as AmerenUE, described that storm as follows:

> 2. On Wednesday, January 28, 2009, an extraordinary and devastating ice storm caused damaged to the entire Southeastern region of Missouri, and knocked out the Associated Electric Cooperative, Inc. (AECI) transmission lines through which Noranda Aluminum, Inc.'s (Noranda) New Madrid, Missouri aluminum smelter receives power. Consequently, an unprecedented and significant loss of AmerenUE's retail load and the revenues associated therewith has occurred for a period that cannot at this time be determined…

Q. Why did Ameren Missouri file *Application for Rehearing and Motion for Expedited Treatment* filed on February 5, 2009?

A. It was seeking to change its FAC as shown by paragraph 1 of its application where it stated the following:

> This Application for Rehearing respecting one aspect of the FAC issue decided in the Report and Order has been filed to avoid an unjust and unwarranted result caused by an act of God – the recent ice storm in Southeast Missouri - that could deprive AmerenUE of up to approximately 45% of the rate relief just granted by the Commission, and that renders the FAC authorized for AmerenUE ineffective in providing AmerenUE with a sufficient opportunity to earn a fair return on equity (ROE). In this Application for Rehearing, AmerenUE proposes a modification to the FAC tariff authorized in the Report and Order that will prevent this loss to AmerenUE while ensuring that customers will be in no worse position than if no ice storm had occurred, and in fact providing the opportunity for windfall benefits to customers, including Noranda.

Q. How did the Commission rule on Ameren Missouri's application and motion?

A. The Commission denied them on February 19, 2009. In its order denying them, the Commission stated:

> If the Commission were to grant AmerenUE's application for rehearing it would have to set aside the approved stipulation and agreement regarding the fuel adjustment clause, reopen the record to take evidence on the appropriateness of the proposed change, and make a decision before the March 1, 2009 operation of law date. Such action is obviously impossible.

Q. How did Ameren Missouri respond to the Commission's denial of its requests?

A. On February 27, 2009, eight days after the Commission issued its order, Ameren Missouri entered into a <u>Physical Capacity and Associated Energy (Partial Requirements – baseload)</u> agreement with AEP for 100 megawatts of capacity for the delivery period of March 1, 2009, through May 31, 2010. Two months later, on April 28, 2009, Ameren Missouri entered into an <u>Electric Service Agreement</u> with WVPA to supply system firm capacity in an amount not to exceed 150 megawatts for the delivery period of May 1, 2009, through October 31, 2010.

Q. Has Ameren Missouri explained why it entered into these arrangements with AEP and WVPA?

A. Yes. Ameren witness Mr. Haro explains in his direct testimony in this case that because of the devastating January 2009 ice storm, Noranda Aluminum, Inc's. (Noranda)[4] ability to take load[5] was impaired. In his direct testimony, on page 4, at lines 9-12, he states, "Because Noranda is Ameren Missouri's largest customer by far, the loss of this substantial load for a long, but at the time indeterminate period created a significant disruption to the Company's portfolio. In the wake of this catastrophic loss, Ameren Missouri's decision to enter into these contracts allowed it to maintain the historical balance of the portfolio."

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[4] Noranda Aluminum, Inc., a Southeast Missouri aluminum smelter and Ameren Missouri's largest customer.

[5] Ameren Missouri's witness Mr. Haro identifies Noranda's load was reduced by 460 megawatts, page 6, line 11, of his Direct Testimony. Mr. Haro identifies Noranda's full load at 490 MW on page 7, line 5, of his Direct Testimony in File No. EO-2012-0074.

Q. At that time was Ameren Missouri's FAC designed to balance its load and off-system sales?

A. No. Ameren Missouri's Commission-authorized FAC was designed to allow Ameren Missouri to timely recover from or refund to customers outside of a formal rate case 95 percent of the difference between its prudently incurred actual fuel and purchased power costs less off-system sales revenue, and base energy costs as estimated using the Base Energy Cost per kWh rates in its FAC, not to balance its load and off-system sales.

Q. During the review period, what were the consequences to Ameren Missouri of Noranda significantly reducing its load, i.e., taking significantly less power from Ameren Missouri?

A. Ameren Missouri billed Noranda for less revenue based on its "permanent rates"—the retail rates established based on traditional revenue requirement calculations.

Q. Who was at risk for this reduction in revenues from Noranda due to Noranda decreasing its energy consumption?

A. Ameren Missouri and its shareholders. Loss of customer load is part of the risk shareholders assume when seeking to earn a return on equity (ROE).

Q. But did not Ameren Missouri recover less from Noranda than what the Commission-approved rate applicable to Noranda was designed to collect?

A. Yes, but rates are only designed to provide the opportunity to earn revenues, not to guarantee them.

Q. What about Ameren Missouri's argument that it was unable to collect its fixed costs attributable to it serving Noranda?

A. That argument is meritless and is irrelevant to this prudence review. The issue here is the effect on Ameren Missouri's FAC. Absent its FAC, Ameren Missouri could have taken, as it attempted to do, the energy it was no longer delivering to Noranda to increase its off-system sales, and then kept the revenues from those off-system sales, i.e., basically replace revenues from Noranda with revenues from increased off-system sales revenues. However, Ameren Missouri's FAC, as it was in effect for this time, required that the revenues from those off-system sales flow through the FAC as a reduction to Ameren Missouri's fuel and purchased power costs captured by its FAC.

Q. Do Ms. Barnes and Mr. Haro describe the off-system sales contracts the Company entered into with Wabash and AEP as long-term requirements sales?

A. Yes, just as they did in File No EO-2010-0255.

Q. Has the Commission already found that the Wabash and AEP sales contracts are not long-term full or partial requirements contracts for purposes of Ameren Missouri's FAC?

A. Yes. The Commission found they are not long-term full or partial requirements contracts under the tariff language of Ameren Missouri's FAC that was in effect for the period March 1, 2009 through September 30, 2009 in File No. EO-2010-0255. In its Report and Order in File No. EO-2010-0255 the Commission stated:

> 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.

Q. Is the tariff language of Ameren Missouri's FAC that was in effect for this prudency review period of October 1, 2009 through May 31, 2011, different?

A. For the period October 1, 2009 to June 20, 2010, it is not. For the period June 21, 2010 to May 31, 2011, it is, and that is why Staff is not proposing any prudency adjustment for the AEP and Wabash contracts in this case for this later period.

Q. On page five of her direct testimony Ms. Barnes testifies:

> While I can't offer a legal opinion on the matter, as I understand it, not following the tariff is not a matter of whether the Company was "prudent", but rather, is an allegation that the Company did not follow the law, because, as I understand it, a tariff is effectively the law.

Does Staff agree with Ms. Barnes's understanding that not following the law does not raise prudency issues?

A. No, not at all. Generally a reasonable person would comply with a tariff when making a decision that the tariff controls in some way; therefore, not complying with a tariff in such circumstances raises a prudency issue. It is appropriate for Staff to review and determine the proper application of tariffs in FAC prudency review cases and make recommendations to the Commission as to whether an electric utility has complied with its tariff. The Commission gave the following guidance regarding prudency in its *Report and Order* in File No. EO-2010-0255:

> 5. The Commission established its standard for determining the prudence of a utility's expenditures in a 1985 decision. In that decision, the Commission held that a utility's expenditures are presumed to be prudently incurred, but, if some other participant in the proceeding creates a serious doubt as to the

> prudence of the expenditure, then the utility has the burden of dispelling those doubts and proving the questioned expenditure to have been prudent.[6]

Q. Does Ms. Barnes claim ratepayers are receiving a "windfall" from the ice storm?

A. Yes, on several occasions in her testimony in this case, just as she did in File No. EO-2010-0255, she claims Ameren Missouri's ratepayers have received a windfall as a result of the ice storm.

Q. Did the Commission address this claim of ratepayer windfall in File No. EO-2010-0255?

A. Yes, I believe so. In the Commission's *Report and Order* in that case, at pages 21-22, the Commission stated the following:

> 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.

[6] In the Matter of the First Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company, d/b/a Ameren Missouri Case No. EO-2010-0255, Report and Order, page 16.

Q. Ms. Barnes claims in her direct testimony, at pages 11-12, that, during the prudency review period, Ameren Missouri did not achieve sufficient revenues for it to realize its "authorized rate of return"—the rate of return the Commission used as a factor in determining rates, does she not?

A. Yes, she does, and she provides a chart, on page 12 of her direct testimony, comparing the Company's authorized and earned returns on equity during the review period.

Q. Does the Commission set rates for Ameren Missouri to guarantee that Ameren Missouri realizes its "authorized rate of return"?

A. Certainly not. The Commission sets rates to provide the utility with an *opportunity*, not a *guarantee*, for that utility to obtain sufficient revenues from future sales for the utility to realize its "authorized rate of return." There are many factors involved that can influence an electric utility's ability to earn its "authorized rate of return." For example, in an extremely hot summer, a utility may realize a higher rate of return than its "authorized rate of return" because its weather sensitive customers use more energy than the energy they would use in the "normal" summer that was used for purposes of setting the rates.

Q. How does Ameren Missouri's FAC impact its ability to earn its "authorized rate of return"?

A. Ameren Missouri's FAC is designed to allow it to recover its prudently incurred fuel and purchased power costs outside of a general rate case. Ameren Missouri's FAC benefits Ameren Missouri greatly because of the volatility in fuel and purchased power costs and because these costs are one of, if not the greatest of, the costs the Company incurs in providing electric service to its customers. Ameren Missouri's FAC allows the Company to recover these costs much quicker than it would through permanent rates in the traditional manner (general rate case). Ameren Missouri's FAC should give it an even greater opportunity to earn its "authorized rate of return." Although she did so in terms of "return on equity" rather than "rate of return," Ms. Barnes explained this in her direct testimony in Ameren Missouri's 2010 general electric rate case, File No. ER-2010-0036, at page 3, lines 14-18, as follows:

> Continuing to track changes in net fuel costs, which continue to be volatile and beyond the Company's control, allows increases in those costs to be recovered on a more timely basis, which provides the Company with improved cash flows and a better opportunity to earn a fair return on equity, both of which will help the Company maintain its credit quality in the current economic climate.

Q. Ms. Barnes claims that Ameren Missouri would be harmed if the revenues received from AEP and Wabash capacity and energy sales are flowed through the FPA calculation in Ameren Missouri's FAC, does she not?

A. Yes, she makes that claim.

Q. Has Staff quantified the reduction in Ameren Missouri's revenues, if the costs and revenues associated with AEP and Wabash capacity and energy sales are flowed through the FPA calculation for accumulation periods 3, 4 and 5?

A. Yes. For the period October 1, 2009, through June 20, 2010, Staff's quantification is the $26,342,791 for accumulation periods 3, 4, and 5, plus interest accrued at Ameren Missouri's short-term borrowing rate from May 31, 2011, until the amount is refunded. Staff did not quantify the amounts for any subsequent period after June 20, 2010, because Ameren Missouri's FAC changed then and Staff is not asserting this AEP and Wabash prudency issue exists after June 20, 2010. As I stated earlier that it's the amount Staff recommends the Commission order be refunded to Ameren Missouri's ratepayers as a prudence review adjustment concurrently with Ameren Missouri's next FAC true-up adjustment.

Q. Would Ameren Missouri customers be harmed if this amount was not properly applied to Ameren Missouri's FPA calculation?

A. Yes. When the Commission approved a FAC for Ameren Missouri, the risk of changes in Ameren Missouri's fuel costs were shifted from Ameren Missouri to its retail customers. If those customers are required to assume this risk, then they should benefit when Ameren Missouri's fuel and purchased power costs go down. If this amount is not returned to Ameren Missouri's customers, then they would be denied the benefit of having this amount returned to them through the Fuel Adjustment Charge on their bills, but they will have taken on the risk of paying increased fuel and purchased power costs. It would be very one-sided if Ameren Missouri's customers have the risk of increases in fuel and purchased power costs less off-system sales revenue, but not the benefits of reductions in fuel and purchased power costs less off-system sales revenue.

Q. Earlier you testified that Ms. Barnes and Mr. Haro describe the off-system sales contracts the Company entered into with Wabash and AEP as long-term requirements sales. Does Ms. Barnes claim that the revenue and costs associated with the AEP and Wabash contracts should not be included in the FPA calculation because they are long-term requirement sales?

A. Yes, on page 11 of her direct testimony, starting on line 15, she testifies as follows:

> Q. Was Ameren Missouri able to enter into contracts that reflected long-term requirements sales?
> A. Yes. As explained by Mr. Haro, Ameren Missouri was able to enter into two such sales with AEP and Wabash.

Q. Do Ms. Barnes or Mr. Haro define the term "long-term partial requirements sales" in their direct testimony?

A. No, they do not.

Q. Is the definition of long-term full or partial requirements sales, as used in Ameren Missouri's FAC tariff sheets, important?

A. Yes, it is very important as it relates to how the Wabash and AEP contracts are to be treated, i.e., whether the revenues and costs associated with them are included or excluded in the FPA calculations.

Q. Are long-term full or partial requirements sales defined in Ameren Missouri's FAC tariff sheets?

A. No. No definitions for the terms describing the Wabash and AEP contracts are contained in the tariff.

Q. Do not electric utilities classify the nature of sales contracts in reports they file with this Commission and at the FERC each year.

A. Yes.

Q. Are those classifications helpful for defining long-term full or partial requirements sales as those terms are used in Ameren Missouri's FAC tariff sheets?

A. I believe so.

Q. Did Ameren Missouri file such a report for 2010?

A. Yes, under its corporate name of Union Electric Company.

Q. What classifications of the nature of sales contracts are in that report?

A. On page 310 the following statistical classifications are listed:

> RQ – for requirements service. Requirements service is service which the supplier plans to provide on an ongoing basis (i.e., the supplier includes projected load for this service in its system resource planning). In addition, the reliability of requirements service must be the same as, or second only to the supplier's service to its own ultimate consumers.

> LF – for long-term service. “Long-term” means five years or Longer and “firm” means that service can not be interrupted for economic reasons and is intended to remain reliable even under adverse conditions (e.g., the supplier must attempt to buy emergency energy from third parties to maintain deliveries of LF service). This category should not be used for Long-term firm service which meets the definition of RQ service. For all transactions identified as LF, provide in a footnote the termination date of the contract defined as the earliest date that either buyer or setter can unilaterally get out of the contract.
>
> IF – for intermediate-term service. The same as LF service except that “intermediate-term” means longer than one year but less than five years.
>
> SF – for short-term firm service. Use this category for all firm services where the duration of each period of commitment for service is one year or less.
>
> LU – for Long-term service from a designated generating unit. “Long-term” means five years or Longer. The availability and reliability of service, aside from transmission constraints, must match the availability and reliability of designated unit.
>
> IU – for intermediate-term service from a designated generating unit. The same as LU service except that “intermediate-term” means Longer than one year but Less than five years.

Q. Did Ameren Missouri classify the AEP and Wabash contracts in this report?

A. Yes, on page 310, at lines 7 and 12, Ameren Missouri classified the AEP contract (American Electric Power Cooperative [sic]) as RQ and SF, respectively, and at line 8 it classified the Wabash contract as RQ.

Q. Is that the same way Ameren Missouri classified these contracts in its 2009 annual report?

A. No. Although Ameren Missouri's 2009 annual report had the same classifications, as I testified in Case No. EO-2010-0255, on page 310, at lines 11 and 12, of that report Ameren Missouri classified the AEP contract as IF and SF, respectively, and on line 9, it classified the Wabash contract as IF.

Q. In which of these annual reports has Ameren Missouri correctly classified the AEP and Wabash contracts?

A. It is Staff's opinion Ameren Missouri correctly classified them in its 2009 annual report and misclassified them in its 2010 annual report. Ameren Missouri filed its 2009 annual report before the Commission's decision in that case and in Staff witness Dana E. Eaves' Direct/Rebuttal Testimony in File No. EO-2010-0255, Staff claimed Ameren Missouri had correctly designated the classification of these contracts and therefore were not subject to the exclusion provided for in Ameren Missouri's FAC tariff. Ameren Missouri filed its 2010 annual report after the Commission's decision in File No. E0-2010-0255. How Ameren Missouri classified the AEP and Wabash contracts in its 2009 annual report is consistent with the Commission's decision in File No. EO-2010-0255, but how it classified them in its 2010 annual report is not.

Q. Did you testify earlier that this classification information is reported to other government agencies?

A. Yes. This information is reported to the Federal Energy Regulatory Commission in the Financial Report FERC Form No. 1.

Q. Did Ameren Missouri report its sales contracts with Public Authorities (Municipals) in its 2010 Annual Report?

A. Yes, on pages 310 and 311, lines 2 through 6, of its 2010 Annual Report, Ameren Missouri lists the following Public Authorities: Missouri Public Utility Alliance; Kahoka, Missouri; Kirkwood, Missouri; Marceline, Missouri; and Perry, Missouri.

Q. Did it include revenues from these sales contracts in its FPA calculations for this audit period of October 1, 2009 through May 31, 2011?

A. No. They were excluded.

Q. Do you know when Ameren Missouri initially entered into each these contracts?

A. No. In response to Staff's Data Request 58 in File No. EO-2010-0255, Ameren Missouri stated, "Ameren Missouri is unable to ascertain the dates requested."

Q. Does Staff know if Ameren Missouri has provided wholesale service to all of these Public Authorities?

A. Yes. Staff has reviewed the Company's Annual Reports for year ending 2006, 2007, 2008, and 2009, and Ameren Missouri listed each of these Public Authorities as a customer. Staff notes that Centralia, Missouri and Hannibal, Missouri are no longer listed, and Missouri Public Utility Alliance was included, being added in the 2010 Annual Report.

Q. Do you know whether Ameren Missouri's sales contracts relationships with these Public Authorities are ongoing?

A. Yes, during the deposition of Mr. Haro on November 19, 2010, he stated that the current contracts were new contracts replacing contracts that had expired. He indicated that these relationships have existed for many years, and the relationships are of such duration that he was unaware if records of initial contracts could be found.

Q. How did Ameren Missouri classify its services to these Public Authorities in its 2010 Annual Report?

A. Ameren Missouri classified each of them as RQ. As stated earlier, this classification is requirements service, *i.e.*, service that the supplier plans to provide on an ongoing basis and includes in its projected load when system resource planning. In addition, the reliability of requirements service must be the same as, or second only to, the supplier's service to its own ultimate consumers.

Q. What is the significance of the RQ designation to the AEP and Wabash prudency issue at hand?

A. Ameren Missouri is claiming that for purposes of the FPA calculations for its FAC the AEP and Wabash contracts should be treated similarly to the Public Authority contracts that are designated RQ on its annual reports. However the characteristics of AEP and Wabash contracts and the Public Authority contracts are significantly different. First, the term of the AEP and Wabash contracts are significantly shorter than those of the Public Authorities' contracts. Unlike its contracts with the Public Authorities, the AEP and Wabash contracts have not been included in Ameren Missouri's Integrated Resource Plan process. Also, the AEP and Wabash contracts were not included in Ameren Missouri's net system input during any rate case proceeding. Finally, the sales to AEP and Wabash have not been included in determining jurisdictional allocation factors, but the sales resulting from the contracts with the Public Authorities were.

Q. Does Mr. Haro claim it was prudent for Ameren Missouri to enter into the contracts with AEP and Wabash?

A. Yes. In his direct testimony he testifies that entering into contracts with AEP and Wabash "was part of the sound, prudent management of the Company's power sales portfolio."[7]

Q. Has Staff ever claimed it was imprudent for Ameren Missouri to enter into these contracts with AEP and Wabash?

A. No. Staff has only claimed that it was imprudent of Ameren Missouri to exclude the revenue and costs associated with these contracts from the calculation of the FPAs in Ameren Missouri's FAC for accumulation periods 3, 4 and 5.

[7] Haro Direct Testimony, page 4, lines3-4

Q. Ms. Barnes claims in her direct testimony that the "Staff may desire customers to gain a windfall from the ice storm to the Company's detriment." Does Staff have that desire?

A. No. Staff's proposed adjustment in this case has nothing to do with picking winners or losers, or creating windfalls for any of the parties affected by this proposed adjustment. Staff's proposed adjustment is to properly account for revenue and costs for Ameren Missouri's Commission-approved FAC. As I testified earlier, if Ameren Missouri's customers are required to assume the risk of a FAC, then they should benefit when fuel and purchased power costs go down, as offset by additional off-system sales.

Q. Do you agree with Ms. Barnes' following assertion at the close of her direct testimony: "And the end result of Ameren Missouri's actions was that customers were paying the same electric bills as if the ice storm hadn't occurred, no more and no less"?[8]

A. No. Ameren Missouri's customers are not in the same position as if the ice storm hadn't occurred, since they are paying the expensive restoration costs Ameren Missouri incurred due to the ice storm. In fact, most of the costs associated with the 2009 ice storm are in current customer rates. Also, under the FAC terms in effect for accumulation periods 3, 4 and 5, and their associated recovery and true-up periods, the bills of Ameren Missouri's customers should have reflected over $26 million less because the costs and revenues for the AEP and WVPA contracts should have been accounted for in the FAC. So far this still has not happened.

Q. Does not Mr. Weiss claim in his direct testimony that Staff has failed to account for a settlement amount of $3.3 million related to the "W" factor added to Ameren Missouri's FAC starting June 21, 2010, as part of the *Second Nonunanimous Stipulation and*

[8] Barnes Direct Testimony, page 14, lines 4-5

Agreement (Stipulation and Agreement) the Commission approved and ordered the parties to comply with in Case No. ER-2010-0036?

A. Yes he does. Staff was aware of this settlement, but believes it does not affect the correct adjustment.

Q. Why does Staff believe this settlement does not affect the adjustment?

A. This settlement amount is just that - a settlement amount - and in no way should it be construed that the $3.3 million dollars agreed to in the Stipulation and Agreement was an offset to customer refund amounts in future periods. Mr. Weiss is simply reading something that does not exist in the Stipulation and Agreement. Ms. Lena M. Mantle provides Staff's response to Mr. Weiss's argument in her direct/rebuttal testimony in this case.

Q. Does this conclude your direct/rebuttal testimony?

A. Yes, it does.

<u>CASE PROCEEDING PARTICIPATION</u>

DANA E. EAVES

PARTICIPATION		TESTIMONY
COMPANY	**CASE NO.**	**ISSUES**
KCP&L Greater Missouri Operations Company	EO-2011-0390	Prudency Review
Ameren Missouri	EO-2012-0074	Prudency Review
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	*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*
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

PARTICIPATION		TESTIMONY
COMPANY	CASE NO.	ISSUES
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
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

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 16th 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

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 treated[1].

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
Dana E. Eaves

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

SUSAN L. SUNDERMEYER
Notary Public - Notary Seal
State of Missouri
Commissioned for Callaway County
My Commission Expires: October 03, 2014
Commission Number: 10942086

Susan L. Sundermeyer
Notary Public

CASE PROCEEDING PARTICIPATION

DANA E. EAVES

PARTICIPATION		TESTIMONY
COMPANY	**CASE NO.**	**ISSUES**
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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
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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		
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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 16th 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

Schedule DEE-4

Is Deemed

Highly Confidential

In Its Entirety

* RIDER FAC
FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE

APPLICABILITY

This rider is applicable to kilowatt-hours (kWh) of energy supplied to customers served by the Company under Service Classification Nos. 1(M), 2(M), 3(M), 4(M), 5(M), 6(M), 7(M), 8(M), 11(M), and 12(M).

Costs passed through this Fuel and Purchased Power Adjustment Clause (FAC) reflect differences between actual fuel and purchased power costs, including transportation, net of Off-System Sales Revenues (OSSR) (i.e., Actual Net Fuel Costs) and Net Base Fuel Costs (factor NBFC, as defined below), calculated and recovered as provided for herein.

For purposes of this FAC, the true-up year shall be from March 1 through the last day of February of the following year. The Accumulation Periods and Recovery Periods are as set forth in the following table:

Accumulation Period (AP)	Filing Date	Recovery Period (RP)
February through May	By August 1	October through September
June through September	By December 1	February through January
October through January	By April 1	June through May

Accumulation Period (AP) means the historical calendar months during which fuel and purchased power costs, including transportation, net of OSSR for all kWh of energy supplied to Missouri retail customers are determined.

Recovery Period (RP) means the billing months as set forth in the above table during which the difference between the Actual Net Fuel Costs during an Accumulation Period and NBFC are applied to and recovered through retail customer billings on a per kWh basis, as adjusted for service voltage level.

The Company will make a Fuel and Purchased Power Adjustment (FPA) filing by each Filing Date. The new FPA rates for which the filing is made will be applicable starting with the Recovery Period that begins following the Filing Date. All FPA filings shall be accompanied by detailed workpapers supporting the filing in an electronic format.

FPA DETERMINATION

Ninety five percent (95%) of the difference between Actual Net Fuel Costs and NBFC for all kWh of energy supplied to Missouri retail customers during the respective Accumulation Periods shall be reflected as an FPA_C credit or debit, stated as a separate line item on the customer's bill and will be calculated according to the following formulas.

For the FPA filing made by each Filing Date, the FPA_C rate, applicable starting with the Recovery Period following the applicable Filing Date, to recover fuel and purchased power costs, including transportation, net of OSSR, to the extent they vary from Net Base Fuel Costs (NBFC), as defined below, during the recently-completed Accumulation Period is calculated as:

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FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE (CONT'D.)

$$FPA_{(RP)} = [[(CF+CPP-OSSR-TS-S) - (NBFC \times S_{AP})] \times 95\% + I + R]/S_{RP}$$

The FPA rate, which will be multiplied by the voltage level adjustment factors set forth below, applicable starting with the following Recovery Period is calculated as:

$$FPA_C = FPA_{(RP)} + FPA_{(RP-1)} + FPA_{(RP-2)}$$

where:

FPA_C = Fuel and Purchased Power Adjustment rate applicable starting with the Recovery Period following the applicable Filing Date.

FPA_{RP} = FPA Recovery Period rate component calculated to recover under/over collection during the Accumulation Period that ended prior to the applicable Filing Date.

$FPA_{(RP-1)}$ = FPA Recovery Period rate component from prior FPA_{RP} calculation, if any.

$FPA_{(RP-2)}$ = FPA Recovery Period rate component from FPA_{RP} calculation prior to $FPA_{(RP-1)}$, if any.

CF = Fuel costs incurred to support sales to all retail customers and Off-System Sales allocated to Missouri retail electric operations, including transportation, associated with the Company's generating plants. These costs consist of the following:

a) For fossil fuel or hydroelectric plants:

(i) the following costs reflected in Federal Energy Regulatory Commission (FERC) Account Number 501: coal commodity, applicable taxes, gas, alternative fuels, fuel additives, Btu adjustments assessed by coal suppliers, railroad transportation, switching and demurrage charges, railcar repair and inspection costs, railcar depreciation, railcar lease costs, similar costs associated with other applicable modes of transportation, fuel hedging costs (for purposes of factor CF, hedging is defined as realized losses and costs minus realized gains associated with mitigating volatility in the Company's cost of fuel and purchased power, including but not limited to, the Company's use of futures, options and over-the-counter derivatives including, without limitation, futures contracts, puts, calls, caps, floors, collars, and swaps), hedging costs associated with SO2 and fuel oil

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FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE (CONT'D.)

adjustments included in commodity and transportation costs, broker commissions and fees associated with price hedges, oil costs, ash disposal revenues and expenses, and revenues and expenses resulting from fuel and transportation portfolio optimization activities; and

(ii) the following costs reflected in FERC Account Number 547: natural gas generation costs related to commodity, oil, transportation, storage, capacity reservation charges, fuel losses, hedging costs, and revenues and expenses resulting from fuel and transportation portfolio optimization activities;

b) Costs in FERC Account Number 518 (Nuclear Fuel Expense).

CPP = Costs of purchased power reflected in FERC Account Numbers 555, 565, and 575, excluding MISO administrative fees arising under MISO Schedules 10, 16, 17, and 24, and excluding capacity charges for contracts with terms in excess of one (1) year, incurred to support sales to all Missouri retail customers and Off-System Sales allocated to Missouri retail electric operations. Also included in factor "CPP" are insurance premiums in FERC Account Number 924 for replacement power insurance (other than relating to the Taum Sauk Plant) to the extent those premiums are not reflected in base rates. Changes in replacement power insurance premiums (other than those relating to the Taum Sauk Plant) from the level reflected in base rates shall increase or decrease purchased power costs. Additionally, costs of purchased power will be reduced by expected replacement power insurance recoveries (other than those relating to the Taum Sauk Plant) qualifying as assets under Generally Accepted Accounting Principles. Notwithstanding the foregoing, concurrently with the date the "TS" factor is eliminated as provided for in this tariff, the premiums and recoveries relating to replacement power insurance coverage for the Taum Sauk Plant shall be included in this CPP Factor.

OSSR = Revenues from Off-System Sales allocated to Missouri electric operations.

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.

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FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE (CONT'D.)

TS = The Accumulation Period value of Taum Sauk. This factor will be used to reduce actual fuel costs to reflect the value of Taum Sauk, and will be credited in FPA filings (of which there are three each year as shown in the table above), until the next rate case or, if sooner, until Taum Sauk is placed back in service. This value is $22.7 million annual for each true-up year as determined in the rate proceeding in which this FAC was established, one third of which (i.e., $7.56 million) will be applied to each Accumulation Period.

S = The Accumulation Period value of Blackbox Settlement Amount of $3 million annually, which shall expire on September 1, 2010. One third of the annual value ($1 million) shall be applied to each Accumulation Period. For the Accumulation Period during which the factor expires, the factor shall be prorated according to the number of days during which it was effective during that Accumulation Period.

I = Interest applicable to (i) the difference between Actual Net Fuel Costs (adjusted for Taum Sauk and factor "S") and NBFC for all kWh of energy supplied to Missouri retail customers during an Accumulation Period until those costs have been recovered; (ii) refunds due to prudence reviews (a portion of factor R, below); and (iii) all under- or over-recovery balances created through operation of this FAC, as determined in the annual true-up filings provided for herein (a portion of factor R, below). Interest shall be calculated monthly at a rate equal to the weighted average interest rate paid on the Company's short-term debt, applied to the month-end balance of items (i) through (iii) in the preceding sentence.

R = Under/over recovery (if any) from currently active and prior Recovery Periods as determined for the annual FAC true-up adjustments, and modifications due to adjustments ordered by the Commission (other than the adjustment for Taum Sauk as already reflected in the TS factor), as a result of required prudence reviews or other disallowances and reconciliations, with interest as defined in item I.

S_{AP} = Supplied kWh during the Accumulation Period that ended prior to the applicable Filing Date, at the generation level.

S_{RP} = Applicable Recovery Period estimated kWh, at the generation level, subject to the FPA_{RP} to be billed.

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FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE (CONT'D.)

NBFC = Net Base Fuel Costs are the net costs determined by the Commission's order as the normalized test year value (and reflecting an adjustment for Taum Sauk, consistent with the term TS) for the sum of allowable fuel costs (consistent with the term CF), plus cost of purchased power (consistent with the term CPP), less revenues from off-system sales (consistent with the term OSSR), less an adjustment (consistent with the term "S"), expressed in cents per kWh, at the generation level, as included in the Company's retail rates. The NBFC rate applicable to June through September calendar months ("Summer NBFC Rate") is 1.001 cents per kWh. The NBFC rate applicable to October through May calendar months ("Winter NBFC Rate") is 0.690 cents per kWh.

To determine the FPA rates applicable to the individual Service Classifications, the FPA_C rate determined in accordance with the foregoing will be multiplied by the following voltage level adjustment factors:

Secondary Voltage Service	1.0888
Primary Voltage Service	1.0492
Large Transmission Voltage Service	1.0147

The FPA rates applicable to the individual Service Classifications shall be rounded to the nearest 0.001 cents, to be charged on a cents/kWh basis for each applicable kWh billed.

TRUE-UP OF FAC

After the completion of each true-up year, the Company will make a true-up filing by May 1 of each year (starting by May 1, 2010) with the Commission. Such filings shall be made by May 1 of every subsequent year until all fuel and purchased power costs accumulated during the effective period of the FAC have been recovered and trued-up. Any true-up adjustments or refunds shall be reflected in item R above, and shall include interest calculated as provided for in item I above.

The true-up adjustment shall be the difference between the revenues billed and the revenues authorized for collection during the true-up year.

GENERAL RATE CASE/PRUDENCE REVIEWS

The following shall apply to this Fuel and Purchased Power Adjustment Clause, in accordance with Section 386.266.4, RSMo. and applicable Missouri Public Service Commission Rules governing rate adjustment mechanisms established under Section 386.266, RSMo:

The Company shall file a general rate case with the effective date of new rates to be no later than four years after the effective date of a Missouri Public Service Commission order implementing or continuing this Fuel and

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UNION ELECTRIC COMPANY ELECTRIC SERVICE

MO.P.S.C. SCHEDULE NO. 5 Original SHEET NO. 98.6

CANCELLING MO.P.S.C. SCHEDULE NO. SHEET NO.

APPLYING TO MISSOURI SERVICE AREA

* RIDER FAC
FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE (CONT'D.)

Purchased Power Adjustment Clause. The four-year period referenced above shall not include any periods in which the Company is prohibited from collecting any charges under this Fuel and Purchased Power Adjustment Clause, or any period for which charges hereunder must be fully refunded. In the event a court determines that this Fuel and Purchased Power Adjustment Clause is unlawful and all moneys collected hereunder are fully refunded, the Company shall be relieved of the obligation under this Fuel and Purchased Power Adjustment Clause to file such a rate case.

Prudence reviews of the costs subject to this Fuel and Purchased Power Adjustment Clause shall occur no less frequently than every eighteen months, and any such costs which are determined by the Missouri Public Service Commission to have been imprudently incurred shall be returned to customers with interest at a rate equal to the weighted average interest rate paid on the Company's short-term debt.

*Indicates Addition.

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Issued pursuant to the Order of the MoPSC in Case No. ER-2008-0318.

DATE OF ISSUE January 30, 2009 DATE EFFECTIVE March 1, 2009

ISSUED BY T. R. Voss President & CEO St. Louis, Missouri
NAME OF OFFICER TITLE ADDRESS

RIDER FAC

FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE (CONT'D.)

* Calculation of Current FPA_C Rate:

	Accumulation Period Ending:		Sept. 30, 2009
1.	Total Energy Cost (CF+CPP-OSSR-TS-S)		$152,992,169
2.	Base Energy Cost	-	133,185,194
	2.1 NBFC ($/kWh)	x	$0.01001
	2.2 Accumulation Period Sales kWh (S_{AP})		13,305,214,156
3.	First Subtotal (1.-2.)		$19,806,975
4.	Customer Responsibility	x	95%
5.	Second Subtotal		$18,816,626
6.	Adjustment for Under / Over recovery for Prior Periods Plus Interest (I + R)	±	$136,961
7.	Third Subtotal		$18,953,587
8.	Estimated Recovery Period Sales kWh (S_{RP})	÷	40,800,048,000
9.	FPA_{RP}		$ 0.00046
10.	FPA_{RP-1}	+	$(0.00033)
11.	FPA_{RP-2}	+	$ 0.00000
12.	FPA_C (without Voltage Level Adjustment)		$ 0.00013
13.	Voltage Level Adjustment Factor		
	13.1 Secondary	x	1.0888
	13.2 Primary	x	1.0492
	13.3 Large Transmission	x	1.0147
14.	FPA_C (with voltage level adjustment)		
	14.1 Secondary		$ 0.00014
	14.2 Primary		$ 0.00014
	14.3 Large Transmission		$ 0.00013

* Indicates Change.

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