

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company d/b/a            )  
Ameren Missouri's Tariffs to Decrease Its            )  
Revenues for Electric Service                            )        **File No. ER-2019-0335**

**STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**COMES NOW** Staff of the Missouri Public Service Commission and files *Staff's Proposed Findings and Fact and Conclusions of Law*.

**Issue:** What is the appropriate sharing mechanism between the company and customers for costs recovered through the FAC?

**Findings of Fact:**

1. Under the current FAC, Ameren Missouri passes 95 percent of eligible costs and revenues through the FAC. The remaining 5 percent is not passed through the FAC so that Ameren Missouri will retain an incentive to minimize its costs and maximize its revenue. The Office of Public Counsel ("OPC") urged the Commission to modify the sharing percentages incorporated in the FAC from a 95/5 ratio to an 85/15 ratio. Consumers Council of Missouri did not present testimony on this issue, but it advocates for an 85/15 ratio.

2. Since Ameren Missouri has had an FAC with a 95/5 sharing ratio, that 5 percent share amounts to \$42,326,518 of prudently incurred net fuel costs that the company will never be able to recover.<sup>1</sup> Even to a company as large as Ameren Missouri, \$42 million is a significant incentive.

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<sup>1</sup> The Office of Public Counsel, *Surrebuttal Testimony of Lena M. Mantle*, ER-2019-0335, Sch. LM-S-3 (Feb 14, 2020).

3. Most utilities with FACs do not have a sharing mechanism at all.<sup>2</sup>

4. Furthermore, changing the sharing percentage without a good reason to do so could erode investor confidence in the utility and in the state regulatory process.<sup>3</sup>

### Conclusions of Law:

A. Section 386.266.1, RSMo, the statute that allows the Commission to establish a fuel adjustment clause, provides as follows:

Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

B. Subsection 4 of that statute sets out some of the provisions that must be included in a fuel adjustment clause as follows:

The Commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedule after considering all relevant factors which may affect the cost or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:

- (1) **Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;**
- (2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds;
- (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new rates to be

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<sup>2</sup> Union Electric Company, d/b/a Ameren Missouri, *Rebuttal Testimony of Andrew Meyer*, ER-2019-0335, 12:17-18 (Jan 21, 2020) and Evidentiary Hearing, ER-2019-0335, 352:1-4 (Mar 11, 2020).

<sup>3</sup> Union Electric Company, d/b/a Ameren Missouri, *Rebuttal Testimony of Andrew Meyer*, ER-2019-0335, 16:3-7 (Jan 21, 2020).

no later than four years after the effective date of the commission order implementing the adjustment mechanism...

- (4) In the case of an adjustment mechanism submitted under subsections 1 or 2 of this section, includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate. (emphasis added)

Subsection 4(1) is emphasized because that is the key requirement of the statute. Any fuel adjustment clause the Commission allows Ameren Missouri to implement must be reasonably designed to allow the company a sufficient opportunity to earn a fair return on equity.

C. Subsection 7 of the fuel adjustment clause statute provides the Commission with further guidance, saying the Commission may:

take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation.

D. Finally, subsection 9 of that statute requires the Commission to promulgate rules to "govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments." In compliance with the requirements of the statute, the Commission promulgated Commission Rule 20 CSR 4240-3.161, which establishes in detail the procedures for submission, approval, and implementation of a fuel adjustment clause.

E. Specifically, Commission Rule 20 CSR 4240-3.161(3) establishes minimum filing requirements for an electric utility that wishes to continue its fuel adjustment clause in a rate case subsequent to the rate case in which the fuel adjustment clause was established. Ameren Missouri has met those filing requirements.

Respectfully submitted,

**/s/ Karen E. Bretz**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been electronically mailed to all counsel of record this 7th day of April, 2020.

**/s/ Karen Bretz**