

**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 POST-HEARING BRIEF

COMES NOW Staff of the Missouri Public Service Commission and for *Staff’s Post-Hearing Brief*, states as follows:

Introduction

On July 3, 2019 Ameren Missouri filed proposed tariff sheets requesting approval to implement an approximately \$0.8 million dollar rate decrease. The parties entered stipulations resolving all issues, except the fuel adjustment clause (“FAC”) sharing mechanism issue. An evidentiary hearing was held on this single issue on March 11, 2020. The Commission approved the parties’ stipulations on March 18, 2020.

Staff requests that the Commission order continuation of the 95% / 5% FAC sharing mechanism. Since the passage of § 386.266, RSMo.,¹ the Commission has considered various ratios and determined that the current sharing mechanism creates sufficient incentive for utilities to manage their FAC costs while also remaining faithful to the FAC’s purpose of allowing utilities to recover their prudently-incurred FAC costs.

¹ Section 386.266.1, RSMo states:

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.

Background

Subsection 4(1) of § 386.266, RSMo., establishes that a fuel adjustment clause must allow utilities sufficient opportunity to earn a fair return on equity. The Commission has characterized this as “the key requirement” of a fuel adjustment clause. “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.”² 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.

The Commission approved Ameren’s FAC in Case No. ER-2008-0318, establishing a 95% to 5% ratio sharing mechanism. In that case, the Commission found that allowing Ameren to pass 95% of its prudently-incurred fuel and purchased power costs, above those included in its base rates, through a FAC was appropriate. The Commission stated that with a 95% pass-through, Ameren should operate at optimal efficiency and take all reasonable actions to keep its fuel and purchased power costs as low as possible, and still have an opportunity to earn a fair return on its investment.³

In Ameren’s next general rate case, the Commission requested the parties advise whether the 95% / 5% ratio allows Ameren sufficient opportunity to earn a return on equity while providing adequate incentive to prudently manage its fuel and purchased power

² Missouri Public Service Commission, *Report and Order*, ER-2012-0166, 82 (Dec 12, 2012) and Missouri Public Service Commission, *Report and Order*, ER-2014-0258, 110 (April 29, 2015). The quotes are the same in both orders.

³ Missouri Public Service Commission, *Report and Order*, ER-2008-0318, 70-76 (Jan 1, 2009).

costs.⁴ Staff responded that due to the close proximity of rate cases, it lacked sufficient data to provide a meaningful analysis. Staff recommended leaving the current 95% / 5% FAC sharing mechanism in place.⁵ The Commission authorized continuation of the FAC with the 95% / 5% sharing mechanism and noted that it would review it in Ameren's next general rate case.⁶

In Ameren's next two general rate cases, Case Nos. ER-2011-0028 and ER-2012-0166, Staff and the Office of the Public Counsel ("OPC") advocated for setting the fuel adjustment sharing mechanism at an 85% / 15% ratio, citing various reasons. Former Staff witness Lena Mantle testified for OPC in the subsequent general rate case, Case No. ER-2014-0258, advocating for a 90% / 10% sharing mechanism. In all three cases, the Commission dismissed arguments for changing the 95% / 5% ratio and conclusively stated that it would retain this ratio, because no party had provided sufficient reason to deviate. In the 2011 and 2012 cases, the Commission stated:

Staff's stated reasons for experimenting with adjusting the sharing mechanism of Ameren Missouri's fuel adjustment clause to implement an 85/15 split do not withstand scrutiny. Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company. The Commission finds that there is no reason to change the sharing percentages in the fuel adjustment clause under which Ameren Missouri has operated for the past several years.⁷

⁴ Missouri Public Service Commission, *Order Directing the Parties to Submit Testimony Concerning the Appropriateness of AmerenUE's Current Fuel Adjustment Clause*, ER-2010-0036, 107 (Feb 17, 2010).

⁵ Staff of the Missouri Public Service Commission, *Supplemental Direct Testimony of Lena M. Mantle*, ER-2010-0036, 5:15-6:7 (Feb 22, 2010).

⁶ Missouri Public Service Commission, *Report and Order*, ER-2010-0036, 80 (May 28, 2010). ("Substantially changing the existing fuel mechanism without a meaningful analysis could have severe consequences for AmerenUE and ultimately for ratepayers." *Id.* at 77.)

⁷ Missouri Public Service Commission, *Report and Order*, ER-2011-0028, 86 (July 13, 2011) and Missouri Public Service Commission, *Report and Order*, ER-2012-0166, 83 (Dec 12, 2012). The quote is the same in both orders.

Similarly, in the 2014 case the Commission stated:

There is no sufficient reason to change the existing 95/5 sharing percentage under which Ameren Missouri has operated for the past several years. Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company. The Commission finds that there is no reason to change the sharing percentages in the fuel adjustment clause under which Ameren Missouri has operated for the past several years.⁸

Ameren's next rate case, Case No. ER-2016-0179, was settled by stipulation in which OPC agreed to continue the 95% / 5% sharing ratio. The Commission adopted the parties' stipulation. The instant case is Ameren's next rate case after ER-2016-0179.

Argument

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

Ameren and Staff support continuation of the 95% / 5% sharing ratio, which the Commission has consistently ordered. OPC advocates for an 85% / 15% share by arguing that Ameren is gaming the FAC to portray this rate case as a decrease and that the 85% / 15% sharing mechanism borrowed from the recently passed plant in-service accounting ("PISA") statute is a reasonable alternative. But at the same time that OPC claims that Ameren is a bad actor for manipulating the FAC, it also states that it found no incidence of imprudence.⁹

The Commission should order continuation of the 95% / 5% sharing mechanism. Under it, actual FAC costs are compared to estimated FAC costs following a FAC Accumulation Period. If estimated costs exceed actual costs, 95% of the difference is returned to customers. If actual costs exceed estimated costs, 95% of the difference

⁸ Missouri Public Service Commission, *Report and Order*, ER-2014-0258, 111 (April 29, 2015).

⁹ Evidentiary Hearing, ER-2019-0335, 322:16-18, 398:21-399:1 (March 11, 2020).

is recovered from customers. As discussed above and shown in Schedule AMM-R1 attached to Ameren witness Andrew Meyer's rebuttal testimony, this ratio is well-established and the Commission has consistently ordered it, even in the face of other proposals from various parties, including Staff. This ratio gives Ameren sufficient incentive to efficiently manage its fuel and purchased power costs, which is illustrated in the current case as declining transportation costs have decreased Ameren's net base energy costs ("NBEC").

OPC suggests that Ameren is artificially normalizing NBEC and keeping the revenue requirement lower in order to portray this case as a rate decrease, when it is actually a rate increase. Under this scenario, Ameren would lose 5% of its FAC costs. OPC asserts that "[t]his difference may be a loss the utility is willing to take."¹⁰ OPC's only proof of manipulation is that Ameren reduced its normalized FAC costs by \$108 million¹¹ and states that but for Ameren's fuel costs declining, Ameren would be requesting a rate increase.¹² Ameren witness Andrew Meyer responds that Ameren would not sacrifice \$5.4 million (5% of \$108 million) annually until its next rate case for public relations purposes¹³ and that OPC ignores the negative publicity high FAC rates would create.¹⁴

¹⁰ Office of the Public Counsel, *Direct Testimony of Lena M. Mantle*, ER-2019-0335, 4:13-14 (Dec 4, 2019).

¹¹ *Id.* at 4:21-26.

¹² *Id.* at 5:5-8.

¹³ Union Electric Company, d/b/a Ameren Missouri, *Rebuttal Testimony of Andrew Meyer*, ER-2019-0335, 5:3-9 (Jan 21, 2020).

¹⁴ *Id.* at 4:1-10.

After its independent review, Staff arrived at a lower NBEC than Ameren's.¹⁵ If Ameren was manipulating its NBEC, Staff's NBEC would have been higher. Further, OPC's arguments are disingenuous, because it agreed to the NBEC in the parties' stipulation (which is Staff's calculation).¹⁶ To support its belief that the NBEC was artificially low, OPC should have proposed its own NBEC¹⁷ and/or not stipulated to Staff's. The truth of the matter is that although OPC has done no independent analysis to calculate the NBEC or meaningfully dispute Ameren or Staff's calculations, it twists Ameren's success in lowering its fuel costs to create a platform for changing the sharing mechanism.

OPC's reliance on the PISA statute for authority to create a FAC 85% / 15% sharing mechanism is misplaced. The PISA statute allows a utility to recover 85% of total depreciation expense and return associated with eligible plant additions in subsequent rate cases through an amortization. PISA applies to capital costs, while the FAC applies to fuel and purchased power costs. PISA amortizations will always be an expense – and they are a guaranteed recovery in the rate case subject to any prudence disallowances. FAC can be either a ratepayer expense or refund. While PISA is a statutory 85% deferral, the statute giving legislative authority for utilities to have a FAC specifies no sharing mechanism and leaves it to the Commission to determine. According to § 386.266, RSMo., the Commission cannot revise Ameren's FAC without inquiry into whether a revised tariff allows Ameren reasonable opportunity to realize its rate of return.

¹⁵ *Id.* at 8:11-12 (Jan 21, 2020).

¹⁶ Evidentiary Hearing, ER-2019-0335, 399:19-400:3 (March 11, 2020).

¹⁷ Office of the Public Counsel, *Direct Testimony of Lena M. Mantle*, ER-2019-0335, 4:17-18 (Dec 4, 2019).

The FAC statute allows the Commission to consider business risk in crafting orders. Business risk is created when the regulatory environment suffers from a lack of consistency and predictability. As Ameren witness Tom Byrne stated:

If Ms. Mantle's proposal is accepted, the sharing percentage will be an issue up-for-grabs in every electric rate case. Sharing percentages will be inconsistent for utilities from rate case to rate case, and they will be inconsistent between utilities. For example, if Ms. Mantle's sharing percentage were to be adopted in this case, Ameren Missouri would have a sharing percentage of 15%, while Evergy and Empire would still have a sharing percentage of 5%. This is regulatory inconsistency at its worse.¹⁸

In most of its FAC analyses, Staff found no evidence of Ameren imprudence.¹⁹ Neither has OPC.²⁰ Staff has found no reason to deviate from the well-established 95% / 5% sharing mechanism, and OPC's objections to it do not withstand scrutiny.

Conclusion

For the reasons set forth in this brief, the Commission should issue an order continuing the 95% / 5% sharing mechanism.

WHEREFORE Staff submits the foregoing *Staff's Post-Hearing Brief* for the Commission's consideration.

¹⁸ Union Electric Company, d/b/a Ameren Missouri, *Rebuttal Testimony of Tom Byrne*, ER-2019-0335, 55:11-17 (Jan 21, 2020).

¹⁹ In seven prudency reviews, Staff found imprudence once related to Ameren's failure to flow revenue through its FAC, related to a 2009 ice storm.

²⁰ Evidentiary Hearing, ER-2019-0335, 322:16-18, 398:21-399:1 (March 11, 2020).

Respectfully submitted,

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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 30th day of March, 2020.

/s/ Karen Bretz