STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 7th day of September, 2011.

In the Matter of the Adjustment of Union Electric Company d/b/a Ameren Missouri's Fuel Adjustment Clause for the 7th Accumulation Period	)))	**File No. ER-2012-0028** Tariff No. YE-2012-0065

ORDER REGARDING FUEL ADJUSTMENT CLAUSE TARIFF

Issue Date: September 7, 2011 Effective Date: September 23, 2011

Syllabus

This order approves Ameren Missouri's tariff to implement a FAC rate adjustment and denies MIEC's motion for FAC credits from off-system sales margins.

Background

On July 25, 2011, Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri"), submitted an application and tariff designed to implement an adjustment to its current Fuel and Purchased Power Adjustment rates (FPAc) of its Fuel Adjustment Clause (FAC).[1] The tariff bears an effective date of September 23, 2011.

Along with its tariff filing, Ameren Missouri filed the testimony of Jeff L. Dodd, Ameren Missouri's Manager of Wholesale Power and Fuel Accounting. Mr. Dodd testified that the purpose of the tariff is "to adjust customer rates for changes in Ameren Missouri's fuel and purchased power costs net of off-system sales revenues (i.e., net fuel costs),

[1] On August 18, 2011, Ameren Missouri revised its tariff sheet to correct the sheet number.

which were experienced during the four-month period February 2011 through May 2011."[2]

Mr. Dodd further explained:

> Ameren Missouri's net fuel costs during the February 1, 2011 to May 31, 2011, Accumulation Period have increased as compared to the net base fuel costs ("NBFC") applicable to that period. The factor driving this cost increase was lower off-system sales margins caused by lower power prices. Specifically, for the subject Accumulation Period Ameren Missouri's net fuel costs are more than the NBFC for that period by approximately $5,866,077. In accordance with the Commission's rule and Ameren Missouri's approved Rider FAC, Ameren Missouri is making this filing to set its FPAc rate so that customers will pay 95% of this cost increase. Also included in this FPAc rate are amounts resulting from orders received in Case No. EO-2010-0255 (The Company's first prudence review docket; this reduces net fuel costs by $17,169,838),[3] and Case Nos.ER-2010-0274 and ER-2011-0321 (the Company's first and second true-up dockets, which increases net fuel costs by a total of $2,199,132). The Commission's FAC rules require these Commission-ordered sums to be included in the new FPAc rate. The new FPAc rate will appear as a separate line item on the customers' bills starting with the October, 2011 billing month, when the Recovery Period applicable to the subject Accumulation Period begins.

Ameren Missouri's proposed tariff changes the current FPAc per kWh rate (without voltage level adjustment) to $0.00174 per kWh which is the cumulative sum of: 1) the FPA_5 of $0.00154 per kWh, 2) the FPA_6 of $0.00058 per kWh, and 3) FPA_7 of $(0.00038) per kWh. Because of a difference in line losses, there are different current FPAc per kWh rates for service taken at Secondary, Primary, and Large Transmission voltage levels. Listed below are the proposed FPAc per kWh rates, the current FPAc per kWh rates and the difference between them for Secondary, Primary, and Large Transmission service.

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[2] This four-month period is the third Accumulation Period occurring under Ameren Missouri's current Rider FAC, which was approved by the Commission in Case No. ER-2010-0036. It is the seventh overall Accumulation Period if one accounts for the full and partial Accumulation Periods that occurred under Ameren Missouri's initial Rider FAC, approved by the Commission in Case No. ER-2008-0318, and accounts for prior Accumulation Periods under the current Rider FAC.

[3] This filing also included $735,477 in interest on the $17,169,838, making the total refund $17,905,314. See Staff's Recommendation filed on August 24, 2011, Memorandum page 4.

Service	Proposed FPAc	Current FPAc	Difference
Secondary	$0.00188/kWh	$0.00419/kWh	$(0.00231)/kWh
Primary	$0.00182/kWh	$0.00406/kWh	$(0.00224)/kWh
Large Transmission	$0.00176/kWh	$0.00393/kWh	$(0.00217)/kWh

By these proposed changes in the FPAc, Ameren Missouri requests a decrease in the revenues it bills through its Fuel Adjustment Charge on customers' bills of $9,733,915 during Recovery Period 7—October 2011 to May 2012. Based on a monthly usage of 1,100 kWh, the proposed change to the applicable FPAc will decrease the Fuel Adjustment Charge of an Ameren Missouri residential customer's bill from $4.61 to $2.07, a decrease of $2.54 per month.

<u>MIEC's Motion</u>

On August 16, 2011, the Missouri Industrial Energy Consumers ("MIEC") filed a "Motion for FAC Credits from Off-System Sales Margins." MIEC asserts:

> As a result of the Company's failure to flow the revenues from the contracts into which it entered with Wabash Valley Power Association ("Wabash") and American Electric Power Operating Companies ("AEP") through the FAC, the Company over-collected not only $17,169,838 for accumulation periods one and two, but also over-collected an additional $24,866,885 for accumulation periods three through five (October, 2009 through September 2010). This amount (a total of **$42,036,723**) is uncontested, as it was admitted by the Company in the Surrebuttal Testimony of Ameren Missouri's Controller, Ms. Lynn Barnes in Case No. EO-2010-0255. (Emphasis added by MIEC)

MIEC believes that Ameren Missouri's alleged over-collection of the additional $24,866,885, not included in the requested adjustment, has already been fully litigated in File Number EO-2010-0255, that collateral estoppel should apply to that determination, and that Ameren Missouri's new FAC rates should be reduced to reflect the total amount of revenues that were over-collected as a result of the contracts with AEP and Washbash for accumulation periods one through five.

Ameren Missouri's Reply

On August 26, 2011, Ameren Missouri filed a response to MIEC's motion.[4] Ameren Missouri contends that under the Commission's rules and its FAC tariff, any adjustments to previously charged rates under the FAC that arise from a prudence review respecting a particular period are to be included in the first adjustment filing occurring after the prudence review order is issued, and in this instance no prudence review has yet occurred on Ameren Missouri's alleged over-collection of the additional $24,866,885. Ameren Missouri maintains that:

> . . . the FAC tariff, which, again, has the force and effect of law, also requires that a sum be included in the "R" factor if there are prudence review-related adjustments that were "ordered [past tense] by the Commission." The "R" factor is part of the formula used to calculate the FAC adjustment. When the formula was applied to the accumulation period at issue, there had been no prudence review-related adjustment "ordered by the Commission" *other than* the $17,169,838. The existence of *that* order necessarily dictated that the *ordered* prudence review adjustment value in the "R" factor in the formula was to be $17,169,838. There is no choice in the matter; the only prudence related adjustments that can and must be included in the R factor are those that have been ordered by the Commission—nothing more or less. It is undisputed that the "R" factor in the formula used to calculate the rate filed with the adjustment indeed is $17,169,838.

Ameren Missouri also asserts that MIEC has mistakenly made two presumptions:

> First, MIEC presumes that the result of a subsequent prudence review on these issues will be the same as the result in Case No. EO-2010-0255. That case is on review before the Circuit Court of Cole County (Case No. 11AC-CC00336). The Court could reverse the Commission's decision in Case No. EO-2010-0255, which may lead the Commission to reach a different result in a subsequent prudence review. There may be additional facts adduced during the Staff's audit, or additional evidence presented by a

[4] On August 31, 2011, MIEC filed a reply to Ameren Missouri's response, and on September 1, 2011, MIEC revised its reply. Ameren Missouri, in turn, responded to MIEC. These filings did not raise any additional issues or alter the ultimate analysis and decision.

> party to the subsequent prudence proceeding that also could lead to a different result. For those or other reasons, the Commission may or may not enter a similar order after a future prudence review. Moreover, while MIEC will be free to *argue* in a future prudence review proceeding that the Commission *should* apply principles of collateral estoppel, it is not true (as MIEC suggests) that the Commission *must* do so because the Commission is not bound by the doctrine of collateral estoppel. *See, e.g., In Re: The matter of Southwestern Bell Telephone Co.'s Proposed Radio Common Carrier Tariff***,** 1990 Mo. PSC LEXIS 52 **(**"The Commission is not strictly bound by the principles of stare decisis, res judicata or collateral estoppel.").

Finally, Ameren Missouri claims that: (1) it has followed all requirements of the FAC statute, the FAC rules, and the FAC tariff; (2) MIEC has not alleged any noncompliance with the applicable law; and, (3) the FAC statute and rules mandate that the FAC adjustment become effective after 60 days if it is in accordance with the FAC tariff and the FAC rules.

Staff's Recommendation

On August 24, 2011, the Commission's Staff filed its recommendation regarding Ameren Missouri's FAC tariff. Staff reviewed Ameren Missouri proposed tariff sheet, the direct testimony of Ameren Missouri witness Jeff L. Dodd and associated Ameren Missouri work papers, as well as, Ameren Missouri's monthly information submitted in compliance with 4 CSR 240-3.161(5) and verified that the actual fuel and purchased power costs match the fuel and purchased power costs in Ameren Missouri's proposed tariff. Staff reviewed Ameren Missouri's monthly reports and verified that the kWh billed shown on the monthly reports match the accumulation period sales used to calculate the FPA rates.

Staff also reviewed Ameren Missouri's monthly interest rates that are applied to 95% of the over/under Base Energy Cost amount and verified that the interest rates and calculations of interest amounts are correct for FPA7. Staff also reviewed and verified the correctness of the following Commission ordered adjustments in this filing: true-up for Recovery Periods 1 and 2 with interest, and refund for Accumulation Periods 1 and 2.

Consequently, Staff recommends the Commission issue an order approving Ameren Missouri's proposed tariff sheet, "as filed on August 18, 2011[sic],"[5] to become effective on September 23, 2011, as requested by Ameren Missouri.

On August 29, 2011, Staff filed its response to MIEC's "Motion for FAC Credits from Off-System Sales Margins." Staff states that it supports making adjustments to FACs at the earlier opportunity to minimize regulatory lag. However, Staff further observes:

> File No. EO-2010-0255, upon which MIEC rely, is currently undergoing review in a case Ameren Missouri brought before the Circuit Court of Cole County, Missouri, Case No. 11AC-CC00336, and could be reversed. And, despite MIEC‟s argument to the contrary, the Commission could reach a different result on the issue of whether the Wabash and AEP contracts are long-term full or partial requirements contracts for purposes of its fuel adjustment clause for the period October 1, 2009, through June 20, 2010,[6] than it did for the period March 1, 2009, to September 30, 2009. The Commission has not yet taken evidence on that issue for any or all of that time period.

Staff states that it would support MIEC‟s request if evidence on the issue of whether the Wabash and AEP contracts are long-term full or partial requirements contracts for purposes of its fuel adjustment clause for the period October 1, 2009, through June 20, 2010 could be taken expeditiously. If not, then Staff believes the issue should be left to be addressed in Staff‟s second prudence review—for the period October 1, 2009, through May 31, 2011, which Staff will begin in early September 2011.

Analysis and Decision

The Commission's rule regarding FACs requires the Commission to issue an order approving or rejecting the company's tariff within 60 days of its filing.[7] And, if the FAC rate

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[5] Ameren Missouri's tariff revision was filed on August 16, 2011.

[6] Staff notes that Effective June 1, 2010, Ameren Missouri's tariff was revised to limit the exception for long-term full or partial requirements contracts for purposes of its FAC to municipal contracts.

[7] Commission Rule CSR 240-20.090(4).

adjustment complies with the Commission's rule, Section 386.266, RSMo Supp. 2010, and the FAC mechanism established in the most recent general rate proceeding, the Commission is required to approve the rate adjustment or allow the proposed tariff implementing the adjustment go into effect by operation of law.[8]

The Commission has reviewed Ameren Missouri's tariff filings, and Staff's verified recommendation and memorandum, and finds that the tariff sheet implementing the FAC rate adjustment is in compliance with the Commission's order establishing the FAC and with all applicable statutes and regulations. Ameren Missouri has complied with the Commission's Reports and Orders in File Numbers ER-2011-0028, ER-2010-0274, ER-2011-0321 and EO-2010-0255 regarding its FAC, true-ups of RP1 and RP2, and the customer refund for RP1 and RP2. Consequently, 4 CSR 240-20.090(4) requires the Commission to approve Ameren Missouri's tariff or allow it to go into effect by operation of law.

Because the Commission's rules and the statutory scheme embodied in Section 386.266, RSMo Supp. 2010, allow not only for the refund of any imprudently incurred cost, but also interest on those cost, the ratepayers will always be made whole through the established FAC mechanism. And, there is no need to attempt to expedite recovery of alleged imprudently incurred over-collections when Staff has indicated that its prudence review for the accumulation periods in question in MIEC's motion will begin this month.

The Commission has previously rejected MIEC's attempt to inappropriately expedite recovery of over-collections made by Ameren Missouri that were not yet ordered by the

[8] *Id*.

Commission in File Number ER-2011-0317, and the Commission must not violate its rules mandating approval of a proposed FAC rate adjustment when it is in compliance with the FAC statute and Commission rules.

THE COMMISSION ORDERS THAT:

1. The Missouri Industrial Energy Consumer's "Motion for FAC Credits from Off-System Sales Margins" is denied.

2. Union Electric Company, d/b/a Ameren Missouri' revised tariff filing, assigned Tariff No. YE-2012-0065 is approved to be effective September 23, 2011, as an interim rate adjustment, subject to true-up and prudence reviews. The tariff approved is:

MO. P.S.C. No. 5, Section 4

5th Revised Sheet No. 98.14, Canceling 4th Revised Sheet No. 98.14

3. This order shall become effective on September 23, 2011.

4. This file shall be closed on September 24, 2011.

BY THE COMMISSION

Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett,
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge