

REPORT AND ORDER

Effective Date: May 29, 2020

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) **File No. ER-2019-0335**
Its Revenues for Electric Service)

PARTIES & APPEARANCES

AMEREN MISSOURI:

James Lowery, Attorney at Law, Smith Lewis, LLP, 111 South Ninth Street, Suite 200, Columbia, Missouri 65205.

Wendy Tatro, Attorney at Law, **Jermaine Grubbs**, and **Paula Johnson**, 1901 Choteau Avenue, St. Louis, Missouri 63101.

CONSUMERS COUNCIL OF MISSOURI:

John B. Coffman, Attorney at Law, 871 Tuxedo Boulevard, St. Louis, Missouri 63119-2044.

MIDWEST ENERGY CONSUMERS GROUP:

David Woodsmall, 308 E. High Street, Suite 204, Jefferson City, MO 65101.

MISSOURI DIVISION OF ENERGY:

Jacob Westen, P.O. Box 176, 1101 Riverside Drive, Jefferson City, Missouri 65102.

MISSOURI INDUSTRIAL ENERGY CONSUMERS:

Lewis Mills, 221 Bolivar Street, Suite 101, Jefferson City, Missouri 65101.

Diana M. Vuylsteke, 211 N. Broadway, Suite 3600, St. Louis, Missouri 63102.

NATURAL RESOURCES DEFENSE COUNCIL:

Henry B. Robertson, 319 N. Fourth Street, Suite 800, St. Louis, Missouri 63102.

OFFICE OF THE PUBLIC COUNSEL:

Caleb Hall, Senior Counsel, 200 Madison Street, Suite 650, P.O. Box 2230, Jefferson City, Missouri 65102.

RENEW MISSOURI:

Tim Opitz, 409 Vandiver Dr. Building 5, Suite 205, Columbia, Missouri 65202.

SIERRA CLUB:

Tony G. Mendoza and **Joshua D. Smith**, 2101 Webster Street, Suite 1300, Oakland, California 94612.

Casey Roberts, 1536 Wynkoop Street, Suite 200, Denver, Colorado 80202.

Henry B. Robertson, 319 N. Fourth Street, Suite 800, St. Louis 63102.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Jeff Keevil, Deputy Counsel, and **Karen Bretz**, Senior Counsel, 200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On July 3, 2019, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) filed tariff sheets designed to implement a general rate decrease for its electric service. The tariff sheets bore an effective date of August 2, 2019, but were suspended until May 30, 2020. On February 28, 2020, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), the Staff of the Commission (Staff), the Office of the Public Counsel (Public Counsel), Missouri Department of Natural Resources - Division of Energy, Missouri Industrial Energy Consumers, Midwest Energy Consumers Group, Consumers Council of Missouri, Natural Resources Defense Council, and the Sierra Club (collectively “Signatories”), filed a non-unanimous stipulation and agreement¹ resolving all but two issues regarding Ameren Missouri’s request for a rate decrease. On March 2, 2020, the Signatories filed a Corrected Non-Unanimous Stipulation and Agreement with minor corrections. On March 9, 2020, Ameren Missouri and Public Counsel filed a Second Non-Unanimous Stipulation and Agreement. Ameren Missouri and Public Counsel represented that each of the other parties had no objection to the second stipulation and agreement.

After holding an on-the-record presentation and considering the stipulation and agreements, the Commission approved the two unopposed agreements on March 18, 2020. Revised tariff sheets implementing the two stipulation and agreements and rate changes were allowed to become effective by operation of law on April 1, 2020.

¹ The only non-signatory party, Renew Missouri Advocates, d/b/a Renew Missouri, indicated that it had no objection to the agreement.

The stipulation and agreements resolved all issues with the exception of the fuel adjustment clause (FAC) sharing ratio issue raised by Public Counsel.

The Commission held an evidentiary hearing on March 11, 2020. During the on-the-record presentation and the evidentiary hearing, the Commission received pre-filed written testimony and live cross-examination testimony. Additionally, the Commission took official notice of several past Commission decisions, Staff reports, and Commission rule 20 CSR 4240-20.090. Initial briefs were filed on March 30, 2020 and reply briefs were filed on April 7, 2020.

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Ameren Missouri is a Missouri certificated electrical corporation as defined by Subsection 386.020(15), RSMo (2016),² and is authorized to provide electric service to portions of Missouri.

2. Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

3. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

² Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

4. The FAC is a surcharge on customer bills that covers the increase and/or decrease in fuel and purchased power costs and revenues for the period between rate cases.³

5. Ameren Missouri has utilized an FAC since the Commission first approved it in File No. ER-2008-0318.⁴ In that case, the Commission found that allowing Ameren Missouri 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 found that a 95% pass-through would still provide Ameren Missouri sufficient incentive to operate at optimal efficiency because other incentives also encouraged the company to minimize its net fuel costs.⁵ The Commission also determined that the 95% pass-through would allow Ameren Missouri the opportunity to earn a fair return on its investment.⁶

6. The 95% pass-through to ratepayers and 5% retention by Ameren Missouri in the FAC are commonly referred to as the “95/5 sharing mechanism.” With the 95/5 sharing mechanism, when fuel and purchased-power costs are higher than what was included in permanent rates, customers pay for 95% of the increased costs while Ameren Missouri bears the remaining 5%. Conversely, when fuel and purchased-power activity costs are lower than what was calculated in the previous rate case, customers receive 95% of their excess payments, and the company retains 5% of the savings.⁷

³ Exhibit 200, Direct Testimony of Lena M. Mantle, p. 3.

⁴ File No. ER-2008-0318, *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area*, Report and Order (issued Jan 1, 2009). Ameren Missouri was previously known as AmerenUE.

⁵ File No. ER-2008-0318, Report and Order (issued Jan. 1, 2009), p. 73.

⁶ File No. ER-2008-0318, Report and Order (issued Jan. 1, 2009), p. 73.

⁷ Exhibit 200, Direct Testimony of Lena M. Mantle, p. 3.

7. File No. ER-2010-0036 was Ameren Missouri's next general rate case after its FAC was first approved.⁸ In that case, the Commission asked the parties whether the 95/5 sharing mechanism allowed Ameren Missouri sufficient opportunity to earn a return on equity while providing adequate incentive to prudently manage its fuel and purchased power costs.⁹ Staff reported that it lacked sufficient data to provide a meaningful analysis because the two cases were held so close together.¹⁰ Ultimately, the Commission authorized continuation of the FAC with the 95/5 sharing mechanism and noted that it would review the sharing ratio in Ameren Missouri's next general rate case.¹¹

8. In Ameren Missouri's next two general rate cases, File Nos. ER-2011-0028¹² and ER-2012-0166,¹³ Staff and the Public Counsel advocated for setting the fuel adjustment sharing mechanism at an 85% to 15% ratio.¹⁴ In Ameren Missouri's next general rate case, File No. ER-2014-0258,¹⁵ Public Counsel's witness advocated for a 90% to 10% sharing ratio.¹⁶ In all three cases, the Commission dismissed arguments

⁸ File No. ER-2010-0036, *In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order (issued May 28, 2010).

⁹ File No. ER-2010-0036, Order Directing the Parties to Submit Testimony Concerning the Appropriateness of AmerenUE's Current Fuel Adjustment Clause (issued Feb 17, 2010).

¹⁰ File No. ER-2010-0036, Report and Order (issued May 28, 2010), p. 74, (citing, Supplemental Direct Testimony of Lena M. Mantle - FAC, pp. 5-6).

¹¹ File No. ER-2010-0036, Report and Order (issued May 28, 2010), p. 80.

("Substantially changing the existing fuel mechanism without a meaningful analysis could have severe consequences for AmerenUE and ultimately for ratepayers." *Id.* at 77.).

¹² File No. ER-2011-0028, *In the Matter of Union Electric Company d/b/a AmerenUE's Tariff to Increase Its Annual Revenues for Electric Service*.

¹³ File No. ER-2012-0166, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service*.

¹⁴ File No. ER-2011-0028, Report and Order (issued July 13, 2011); and File No. ER-2012-0166, Report and Order (issued Dec. 12, 2012).

¹⁵ File No. ER-2014-0258, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service*.

¹⁶ File No. ER-2014-0258, Report and Order (issued April 29, 2015), p. 108.

for changing the 95/5 ratio and found that no party had provided a reason to change the percentages.¹⁷

9. Ameren Missouri's next rate case, File No. ER-2016-0179,¹⁸ was settled by stipulation and agreement that the Commission approved. In that agreement, Public Counsel, along with the other parties, agreed to continue the 95/5 sharing ratio.¹⁹

10. The current case is Ameren Missouri's next rate case after File No. ER-2016-0179. Under its current FAC, Ameren Missouri continues to pass 95% of eligible costs and revenues through the FAC. The remaining 5% is not passed through the FAC and operates as an incentive for Ameren Missouri to minimize fuel and purchased power costs.²⁰

11. In this case, Public Counsel has proposed to change the FAC sharing percentage based on its claim that doing so "would create a greater incentive for Ameren Missouri to manage the FAC costs"²¹ and "reduce the likelihood of gamesmanship with the FAC."²² Public Counsel provided no direct evidence to support that a "greater" incentive would provide any better results other than the opinion to that effect by its witness Lena M. Mantle. Public Counsel also admitted that the "inefficient scheduling of generation resources" could be brought before the Commission in an FAC prudence review.²³

¹⁷ File No. ER-2011-0028, Report and Order (issued July 13, 2011), p. 86; File No. ER-2012-0166, Report and Order (issued Dec. 12, 2012), p. 83; and File No. ER-2014-0258, Report and Order (issued April 29, 2015), p. 111.

¹⁸ File No. ER-2016-0179, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service*.

¹⁹ File No. ER-2016-0179, Order Approving Unanimous Stipulation and Agreement (issued March 8, 2017).

²⁰ Transcript, p. 380.

²¹ Exhibit 200, Direct Testimony of Lena M. Mantle, p. 5.

²² Exhibit 200, Direct Testimony of Lena M. Mantle, p. 6.

²³ Exhibit 202, Surrebuttal Testimony of Lena M. Mantle, p. 6.

12. In the ten quarterly FAC surveillance reports submitted by Ameren Missouri for the 2nd Quarter 2017 through the 3rd Quarter 2019, Ameren Missouri reported earning below its authorized return on equity only once.²⁴

13. Since the beginning of Ameren Missouri's FAC, its 5% share of prudently incurred net fuel costs has totaled \$42,326,518,²⁵ which is less than one percent of all of Ameren Missouri's fuel costs.²⁶

14. Under its FAC, it has been more likely to have a decrease in fuel costs than to have an increase.²⁷

15. Fuel costs are volatile and electric utilities do not have complete control over those fuel costs.²⁸ In general, Ameren Missouri's net energy costs are set by markets for energy and fuel that are largely beyond Ameren Missouri's control.²⁹ However, certain measures are within the utility's control, such as employing qualified and experienced personnel to pursue economic efficiencies and negotiate better contracts for both itself and its customers.³⁰ Ameren Missouri has also engaged in historical hedging practices in an attempt to mitigate fuel price volatility.³¹

16. Even though fuel costs are volatile, Ameren Missouri's coal costs have decreased by almost 19% since 2016.³²

17. Most utilities in other states with FACs do not have a sharing mechanism.³³

²⁴ Exhibit 201, Rebuttal Testimony of Lena M. Mantle, p. 6.

²⁵ Exhibit 202, Surrebuttal Testimony of Lena M. Mantle, Schedule LM-S-3; and Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 16.

²⁶ Tr. pp. 392 and 405.

²⁷ Exhibit 202, Surrebuttal Testimony of Lena M. Mantle, Schedule LM-S-3.

²⁸ Exhibit 6, Direct Testimony of Andrew Meyer, pp. 5, and 18-26; and Tr. pp. 335-337.

²⁹ Tr. p. 336; and Exhibit 6, Rebuttal Testimony of Andrew Meyer, pp. 17-26.

³⁰ Tr. pp. 335, 342-344.

³¹ Tr. p. 335.

³² Exhibit 6, Direct Testimony of Andrew Meyer, pp. 18-19.

³³ Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 12; and Tr. p. 352.

18. Changing the sharing percentage without evidence supporting a reason to do so, could erode investor confidence in the utility.³⁴

19. In addition to the FAC sharing mechanism, Ameren Missouri has other incentives to prevent it from misusing the FAC, including prudence reviews with disallowance of imprudent costs and the elimination or alteration of the FAC in a future case.³⁵

20. No party is alleging that Ameren Missouri acted imprudently with its current FAC 95/5 sharing mechanism.³⁶ Staff's witness testified that there had been no pattern of imprudence discovered during the many prudence reviews of the FAC³⁷ and there has not been a complaint action brought against Ameren Missouri for failing to prudently manage its net energy costs through its FAC.³⁸ The Commission did order Ameren Missouri to refund \$17,169,838, plus interest, to rate payers in 2011 after an FAC prudence review because Ameren Missouri categorized certain contracts incorrectly.³⁹

III. Conclusions of Law

A. The FAC's enabling statute provides that the Commission may include "features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities" when approving an FAC.⁴⁰

³⁴ Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 16; and Tr. p. 348.

³⁵ Exhibit 7, Rebuttal Testimony of Andrew Meyer, p. 15. See also, File No. ER-2008-0318, Report and Order (issued Jan. 27, 2009), pp. 70 and 73.

³⁶ Tr. p. 366-368, 378, and 398-399.

³⁷ Tr. p. 380.

³⁸ Tr. p. 366-368, 378, and 398-399.

³⁹ File No. EO-2010-0255, *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 AmerenUE*, Report and Order (issued April 27, 2011).

⁴⁰ Subsection 386.266.1, RSMo (Supp. 2019).

B. The state legislature's enactment of Section 393.1400, RSMo (the PISA statute) did not establish a legislative policy, presumption, or directive that supports imposing a 15% share of changes in net energy costs on utilities that have an FAC. Section 386.266 was not amended explicitly or implicitly by the enactment of the PISA statute.⁴¹

C. Commission rule 20 CSR 4240-20.090(11)(B)2 provides that if "the staff, OPC, or other party auditing the [FAC] believes that insufficient information has been supplied to make a recommendation regarding . . . [prudence], it may utilize discovery to obtain the information it seeks."⁴² The prudence audit rule also provides for a suspension of the 180-day timeline if there is a discovery dispute and a pending motion to compel and allows the Commission to extend the 180-day timeline for other reasons for good cause shown.⁴³ If that happens, the case becomes a contested one under Section 536.010, RSMo, and the parties will have additional opportunity to conduct discovery. There is no operation of law date in such a proceeding and Public Counsel or any other party can take the steps it needs to address claims of imprudence.

IV. Decision

Ameren Missouri has requested that its FAC continue to include a 95/5 sharing mechanism as it has since its inception. As the applicant, Ameren Missouri bears the burden to show that its requested FAC should continue. Given that the parties reached an agreement, which was approved by the Commission, including the continuation of a FAC sharing mechanism demonstrates that Ameren Missouri has satisfied that requirement. The

⁴¹ See, e.g., *LeSage v. Dirt Cheap Cigarettes and Beer, Inc.* 102 S.W.3d 1, 5 (Mo. banc 2003).

⁴² Emphasis added.

⁴³ 20 CSR 4240-20.090(11)(B).

only contested issue for Commission decision is whether the sharing percentages should remain 95/5 as requested by Ameren Missouri, or should be changed to 85/15 as requested by Public Counsel.

Public Counsel argues that changing the sharing percentages to 85/15 will provide more incentive for Ameren Missouri to keep net fuel costs as low as possible. Staff and Ameren Missouri argue that the current sharing mechanism has not been shown to be ineffective and should stay the same. The state legislature gave the Commission the discretion to create the FAC incentives and it is within the Commission's discretion to reevaluate that sharing mechanism. The facts in this case, however, do not show that there is any reason to adjust the sharing mechanism.

The Commission has found on several occasions, that the 95/5 sharing ratio provides Ameren Missouri sufficient incentive to operate at optimal efficiency and still provides an opportunity for Ameren Missouri to earn a fair return on its investment. The evidence in this case also showed that Ameren Missouri continues to have the opportunity to earn a fair return, as shown by its quarterly earnings from 2017 through 2019, and it continues to operate efficiently, as shown by the tendency for Ameren Missouri to have decreasing fuel costs. Staff's witness testified that the 95/5 ratio was an appropriate incentive based on finding no pattern of imprudence during the previous prudence reviews.

Additionally, no evidence was presented that Ameren Missouri acted imprudently or manipulated its FAC to the detriment of ratepayers. Public Counsel's evidence showed changing the sharing mechanism to 85/15 would provide more pressure on Ameren Missouri, but not that more pressure is needed. Fuel costs are regularly lower than

estimated and there was no evidence that the 85/15 sharing percentages would improve the company's efficiencies.⁴⁴ As the Commission has found in its prior decisions, there are also other incentives to keep costs low such as prudence reviews and the possibility that the FAC could be discontinued completely. The Commission determines that the 95/5 sharing mechanism remains appropriate for all the same reasons it was found appropriate in those prior Commission decisions.

Public Counsel's claim that the legislature has provided guidance on the appropriate incentive mechanism sharing percentages by including 15% of capital investments in the PISA statute is also not persuasive. The legislature's creation of an unrelated sharing mechanism in another utility statute does not imply the legislature intends those percentages to carry over to the FAC.

The Commission's decision in this case should not be taken as stating that there may never be a change to the sharing percentage or that the Commission will always maintain the status quo. However, in this case the evidence does not support a change in the sharing percentage.

Therefore, the Commission determines that based on the facts in this case, the 95/5 sharing mechanism in Ameren Missouri's FAC provides the appropriate incentive to properly manage its net energy costs. Because the general rate tariffs have already become effective and include the FAC with the 95/5 sharing mechanism, the company need not take further action to implement this decision.

THE COMMISSION ORDERS THAT:

1. The fuel adjustment clause of Ameren Missouri shall continue to include a

⁴⁴ The opinion of Public Counsel's witness without other supporting evidence does not persuade the Commission that the sharing percentage is not sufficient or should be changed.

95/5 sharing mechanism.

2. This report and order shall become effective on May 29, 2020.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Dippell, Senior Regulatory Law Judge

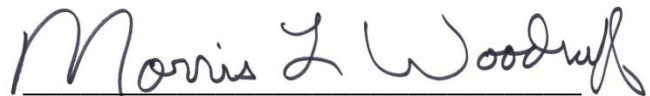
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 29th day of April 2020.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

April 29, 2020

File/Case No. ER-2019-0335

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

Consumers Council of Missouri

John B Coffman
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
john@johncoffman.net

Midwest Energy Consumers Group

David Woodsmall
308 E. High Street, Suite 204
Jefferson City, MO 65101
david.woodsmall@woodsmalllaw.com

Missouri Division of Energy

Jacob Westen
1101 Riverside Drive
P.O. Box 176
Jefferson City, MO 65102-0176
Jacob.Westen@dnr.mo.gov

**Missouri Industrial Energy
Consumers (MIEC)**

Lewis Mills
221 Bolivar Street, Suite 101
Jefferson City, MO 65101-1574
lewis.mills@bclplaw.com

**Missouri Industrial Energy
Consumers (MIEC)**

Diana M Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dianavuylsteke@icloud.com

**Missouri Public Service
Commission**

Jeff Keevil
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jeff.keevil@psc.mo.gov

Natural Resources Defense Council

Henry B Robertson
319 N. Fourth St., Suite 800
St. Louis, MO 63102
hrobertson@greatriverslaw.org

Renew Missouri

Tim Opitz
409 Vandiver Dr Building 5, Suite 205
Columbia, MO 65202
tim@renewmo.org

Sierra Club

Tony G Mendoza
2101 Webster Street, Suite 1300
Oakland, CA 94612
tony.mendoza@sierraclub.org

Sierra Club

Casey Roberts
1536 Wynkoop St., Suite 200
Denver, CO 80202
casey.roberts@sierraclub.org

Sierra Club

Henry B Robertson
319 N. Fourth St., Suite 800
St. Louis, MO 63102
hrobertson@greatriverslaw.org

Sierra Club

Joshua D Smith
2101 Webster Street, Suite 1300
Oakland, CA 94612
joshua.smith@sierraclub.org

Union Electric Company

Jermaine Grubbs
1901 Chouteau Avenue
St. Louis, MO 63103
AmerenMOService@ameren.com

Union Electric Company

Paula Johnson
1901 Chouteau Avenue
St Louis, MO 63103
AmerenMOService@ameren.com

Union Electric Company

James B Lowery
111 South Ninth St., Suite 200
P.O. Box 918
Columbia, MO 65205-0918
lowery@smithlewis.com

Union Electric Company

Wendy Tatro
1901 Chouteau Ave
St. Louis, MO 63103-6149
AmerenMOService@ameren.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.