BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Consideration of Adoption Of the PURPA Section 111(d)(11) Net Metering Standard as Required by Section 1251 of the Energy Policy Act of 2005	))))	Case No. EO-2006-0493

ADDITIONAL PLEADING OF CONCERNED CITIZENS OF PLATTE COUNTY, SIERRA CLUB, BURROUGHS AUDUBON, OZARK ENERGY SERVICES, MID-MISSOURI PEACEWORKS AND HEARTLAND RENEWABLE ENERGY SOCIETY

Come now Concerned Citizens of Platte County ("CCPC"), Sierra Club, Ozark Energy Services, Burroughs Audubon, Mid-Missouri Peaceworks and Heartland Renewable Energy Society and in response to the Commission's Order of December 26, 2006 directing filing of additional pleadings state:

On Oct. 31, 2006, PSC Staff filed a "Motion to Open Rulemaking Docket" to deal in one proceeding with all the EPAct 2005 standards. On Dec. 22, "Staff's Updated Suggestions for Future Proceedings" pulled back from this recommendation and asked the Commission first to determine whether each case could be closed on the basis of prior state action.

The IOUs, with the exception of Empire District Electric, have taken the position that the Consumer Clean Energy Act, § 386.887, RSMo (2002) and the implementing regulation 4 CSR 240-20.065, are prior state action, defined as "the standard concerned (or a comparable standard)" within the meaning of EPAct 2005, § 1251(b)(3), 16 U.S.C. § 2622(d).

CCPC et al., together with MDNR and OPC, have consistently argued that there has been no prior state action, primarily because Missouri's statute and rule do not enact net metering. They set a standard that is not the same nor comparable. The comparison is between an apple and an orange (net metering and dual metering); there is no gray area where the statute and rule can be deemed comparable, let alone the same. Your intervenors have made the following argument

before; it will not be necessary to refer to our prior pleadings. We also concur in the thorough discussion by MDNR in their filing of Sept. 15, 2006, "DNR's Response to Questions Posed in the August 17, 2006, Commission Order" (Question 1).

EPAct § 1251(a)(11), 16 U.S.C. § 2621(d)(11), states: "For purposes of this paragraph, the term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period."

Under § 386.887.4 and 4 CSR 240-20.065(5)(A) the electric energy supplied to and produced by the customer-generator are to be separately measured. The customer-generator pays retail for the utility power consumed but gets credit for self-generated power at the utility's avoided cost. § 386.887.3; 4 CSR 240-20.65(5)(A).

This is not net metering. As commonly defined, that term refers to the use of a single meter that records only the net consumption or generation of power. Kenneth Rose and Karl Meeusen, *Reference Manual and Procedures for Implementation of the "PURPA Standards" of the Energy Policy Act of 2005*, pp. 36-7 (APPA, EEI, NARUC and NRECA, March 22, 2006).

The U. S. Environmental Protection Agency defines it thus: "**Net Metering** – A method of crediting customers for electricity that they generate on site in excess of their own electricity consumption. Customers with their own generation offset the electricity they would have purchased from their utility. If such customers generate more than they use in a billing period, their electric meter turns backwards to indicate their net excess generation." http://www.epa.gov/greenpower/whatis/glossary.htm.

The U.S. Department of Energy says, "Net metering enables customers to use their own

generation to offset their consumption over a billing period by allowing their electric meters to turn backwards when they generate electricity in excess of the their demand. This offset means that customers receive retail prices for the excess electricity they generate. Without net metering, a second meter is usually installed to measure the electricity that flows back to the provider, with the provider purchasing the power at a rate much lower than the retail rate." http://www.eere.energy.gov/greenpower/markets/netmetering.shtml. "Offset" is the same term used in the PURPA net metering standard. It is opposed to the dual metering, dual billing standard of the Missouri law. *Windways Technologies v. Midland Power Cooperative*, 696 N.W.2d 303, 304-5 (Iowa 2005).

For this reason the authoritative Database of State Renewable Energy Incentives (www.dsireusa.org) does not list Missouri as a net metering state. The DSIRE glossary defines net metering thus: "For those consumers who have their own electricity generating units, net metering allows for the flow of electricity both to and from the customer through a single, bi-directional meter. With net metering, during times when the customer's generation exceeds his or her use, electricity from the customer to the utility offsets electricity consumed at another time. In effect, the customer is using the excess generation to offset electricity that would have been purchased at the retail rate."

There are other differences. Whereas, under EPAct 1251(a)(11), 16 U.S.C. 2621(d)(11), each utility must make net metering service available to "any electric consumer that the electric utility serves," customer-generators in Missouri are limited to systems of 100 kW capacity, § 386.887.2(5)(c); and the retail electric supplier need not serve anyone once the combined capacity of its net metering customers exceeds or equals the lesser of 10,000 kWh per year or 0.1% of its aggregate peak demand. § 386.887.5. The EPAct standard has no such limits.

In summary, § 386.887 is not the same or a comparable standard because it is not net metering, nor does it have the availability contemplated by the Congressional standard.

CONCLUSION

We acknowledge that ultimate responsibility rests with the legislature to amend § 386.887. As an alternative to a rulemaking the Commission could consider, as was earlier suggested, a workshop devoted to recommending proposed revisions to the legislature that would bring Missouri into compliance..

Therefore we ask the Commission to enter a finding of "no prior state action" and proceed with a rulemaking (either jointly with all the other standards or with the interconnection case, EO-2006-0497) or with a workshop to be advisory to the legislature.

/s/Henry B. Robertson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was sent by email on this 9th day of February, 2007, to the persons on the EFIS service list.

/s/Henry B. Robertson
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