

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

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(18¹) Consideration)
of Smart Grid Investments Standard as Required)
by Section 1307 of the Energy Independence and)
Security Act of 2007.)
File No. EW-2009-0290

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(16) Integrated)
Resource Planning Standard as Required by)
Section 532 of the Energy Independence and)
Security Act of 2007.)
File No. EW-2009-0291

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(17) Rate Design)
Modifications to Promote Energy Efficiency)
Investments Standard as Required by Section)
532 of the Energy Independence and Security)
Act of 2007.)
File No. EW-2009-0292

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(19) Smart Grid)
Information Standard as Required by Section)
1307 of the Energy Independence and Security)
Act of 2007.)
File No. EW-2009-0293

UNION ELECTRIC COMPANY d/b/a AMERENUE'S
REPLY TO STAFF'S RESPONSE TO ORDER SETTING DATE
FOR FILING PROCEDURAL SCHEDULES

COMES NOW Union Electric Company d/b/a AmerenUE (Company or AmerenUE), by
and through counsel, and for its Reply to Staff's Response to Order Setting Date for Filing
Procedural Schedules,² states as follows:

¹ The original legislation contained numbering errors which have now been corrected by Congress. *See* Section 408 (Technical Corrections to the Public Utility Regulatory Policies Act of 1978), enacted as part of the American Recovery and Reinvestment Act of 2009 (H.R. 1).

² Hereinafter, "Staff's Response."

I. Introduction

1. These cases were established on December 17, 2008, when the Commission issued its *Order Establishing Cases, Directing Notice, Establishing a Deadline for Submission of Intervention Requests, Setting a Prehearing Conference and Setting Date for Filing Procedural Schedules*.

2. As the Staff indicates in its December 15, 2008, Motion to Establish a Case, the purpose of these dockets is for the Commission to discharge its duty under the Energy Independence and Security Act of 2008 (EISA)³ to consider four new standards, as outlined in the caption of this Reply, in light of the purposes of the Public Utility Regulatory Policies Act (PURPA).⁴ PURPA's general purposes are to encourage: (a) energy conservation by electric utilities; (b) the optimization of the efficiency of use of facilities and resources by electric utilities; and (c) equitable consumer electric rates.⁵ Indeed, as the Staff also notes, the consideration the Commission must give with respect to the EISA standards is to determine if adoption of some or all of the EISA standards would serve as a "means of carrying out PURPA's general objectives,"⁶ which are outlined above.⁷

3. The Staff's Response expresses the Staff's view that two of the EISA standards⁸ have not yet been considered as required by the EISA, and that those two standards should

³ Pub. L. No. 110-140, 121 Stat. 1492 (2007), *amended by* Section 408 of The American Recovery and Reinvestment Act of 2009 (the EISA, prior to this recent amendment, is codified at 16 USCS 2621 and 2622 (Cum. Supp. 2008)).

⁴ PURPA is codified generally in 16 USCS 2601 *et seq.*, but various provisions appear elsewhere in the United States Code.

⁵ 16 USCS 2611 (1999).

⁶ The Staff's Motion to Establish Case, p. 2.

⁷ The two EISA standards the Staff would roll into an upcoming IRP rulemaking both deal with smart grid technology and have been docketed as File Nos. EW-2009-0290 and EW-2009-0293. The Company agrees that it is appropriate to consider these two EISA standards in the upcoming IRP rulemaking workshops and ultimately in an IRP rulemaking.

⁸ File Nos. EW-2009-0290 and EW-2009-0293, both of which deal with "Smart Grids."

essentially be rolled into the upcoming review of the Commission's Integrated Resource Planning (IRP) rules for consideration in a subsequent IRP rulemaking docket. AmerenUE agrees with the Staff's statement that there is no prior state action exemption available for either of these standards because they have not previously been considered by the Commission, but as outlined below in Sections IV and V of this Reply, the Company disagrees with the Staff's contention that consideration of these standards in the context of the upcoming effort to rewrite the IRP rules is sufficient or appropriate given the entirety of these two EISA standards. Rather, these two EISA standards should be considered as required by the EISA in a consolidated docket (in File No. EW-2009-0293).

4. With respect to the other two EISA standards⁹ (both of which relate to energy efficiency), the Staff asserts that the Commission need not give these standards further consideration on the theory that these standards were already considered "in the context of" the Commission's adoption of its current IRP rules sixteen years ago, in 1993.¹⁰ Consequently, it is apparently the Staff's recommendation that File Nos. EW-2009-0291 and EW-2009-0292 be closed without further consideration by the Commission. For the reasons outlined below, the Company disagrees with this recommendation and respectfully suggests that the terms of the EISA, provisions of the recently-adopted federal stimulus legislation, and the objectives of PURPA warrant proceeding with a consideration of each of these energy efficiency-related standards in the upcoming workshop/docket regarding rewriting the Commission's IRP rules.

⁹ File Nos. EW-2009-0291 and EW-2009-0292.

¹⁰ In the case of the EISA standard docketed as File No. EW-2009-0292, the Staff also claims that this standard was addressed in subsequent IRP's filed by each of the Missouri investor-owned electric utilities under the Commission's jurisdiction.

II. EISA Standard Under 111(d)(16) – Integrated Resource Plan/Energy Efficiency **(File No. EW-2009-0291)**

5. The Staff’s justification for not giving further consideration to the EISA standard found in PURPA Section 111(d)(16), which deals with an “Integrated Resource Planning Standard” respecting energy efficiency, is that the Staff note[s] “that 4 CSR 240-22.010 Policy Objectives [in the existing IRP rules] states in subsection (2)(A) that the electric utility shall:

Consider and analyze demand-side efficiency and energy management measures on an equivalent basis with supply-side alternatives in the resource planning process.”¹¹

6. The subject EISA standard provides as follows:

(16) Integrated Resource Planning. Each electric utility shall –
 (A) integrate energy efficiency resources into utility, State and regional plans; and
 (B) adopt policies establishing cost-effective energy efficiency as a *priority* resource.

7. Note the stark difference between the general “policy” statement in the existing IRP rules, which provides no specific guidance respecting energy efficiency resources in the remainder of the 16 pages of the Commission’s IRP rules, to the directive contained in the EISA standard: the IRP rules suggest a policy of *equivalent* treatment of demand- and supply-side resources, while the EISA standard mandates that electric utilities give energy efficiency resources *priority* treatment.

8. The only way utilities can give energy efficiency resources priority treatment is if the Commission creates a coherent policy that addresses cost recovery, throughput incentives, performance incentives and rate design parameters respecting energy efficiency. Today, the lack of a coherent policy creates confusion and uncertainty respecting the Commission’s treatment in this area (in the IRP process and via rate cases) that discourages energy efficiency, and that

¹¹ The Staff Response, p. 5.

certainly does not promote making energy efficiency resources a priority, as mandated by the EISA standard. Using the upcoming IRP rule docket will allow a genuine consideration of how utilities can make energy efficiency resources cost-effective *priority* resources in view of the Commission's resource planning and ratemaking policies, is the best way to both meet the EISA standard and, just as importantly, to promote energy efficiency itself.

9. The current IRP rules' general "policy" relating to "equivalent" treatment could only qualify for the prior state action exemption found in 16 USCS 2622(e) if the Commission has already considered *the* standard concerned, or a comparable standard. But as outlined above, consideration of a standard of "equivalency" is neither the same as a standard of *priority*, nor is it comparable to a priority standard. Consequently, the Commission's prior consideration of the equivalency standard in the existing IRP rules does not qualify for the prior state action exemption in PURPA. Therefore, consideration of this standard is still required. That consideration should occur in the context of the upcoming review of the IRP rules.

10. There is another compelling reason why the Commission should consider this standard in the upcoming IRP rule docket. On February 17th of this year, President Obama signed the American Recovery and Reinvestment Act of 2009. Included in the Act is Section 410, entitled "Additional State Energy Grants," which deals exclusively with energy efficiency grants under part D of title III of the Energy Policy and Conservation Act (42 USCS 6321 *et seq.*). In order for Missouri customers to benefit from such grants, Governor Nixon must notify the United States Secretary of Energy that he has obtained

"necessary assurances" that each of the following will occur:

- (1) The applicable State regulatory authority [this Commission] will seek to implement, in appropriate proceedings for each electric and gas utility . . . a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-

effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently. * * *

11. Continuing this proceeding provides the Commission an "appropriate proceeding" to "seek to implement" a "general policy" that is not only consistent with, but is directly supportive of the EISA standard's direction that energy efficiency be given priority resource status by electric utilities. This will allow the Governor to give the assurances he must give to obtain these federal energy efficiency grants, while also meeting the consideration requirements of PURPA with respect to this EISA standard, as discussed earlier.

III. EISA Standard Under 111(d)(17) – Rate Design/Energy Efficiency
(File No. EW-2009-0292)

12. The Staff's justification for not giving further consideration to the EISA standard found in PURPA Section 111(d)(17), which deals with rate design modifications to promote energy efficiency, is that the Staff "believes that this standard falls under the prior state action exemption has having been considered in the context of adoption of [the current IRP rules], and has having been subsequently addressed . . ." in IRP proceedings involving the electric utilities regulated by the Commission.

13. To understand why the Staff's justification fails to withstand scrutiny requires consideration of the specific EISA standard at issue, which is as follows:

(17) Rate design modifications to promote energy efficiency investments. (A) In general. The rates allowed to be charged by any electric utility shall –
(i) align utility incentives with the delivery of cost-effective energy efficiency;
and
(ii) promote energy efficiency in investments.

(B) Policy options. In complying with subparagraph (A), each State regulatory authority . . . shall consider –
(i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
(ii) providing utility incentives for the successful management of energy efficiency programs;

- (iii) including the impact on adoption of energy efficiency as one of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
- (iv) adopting rate designs that encourage energy efficiency for each customer class;
- (v) allowing timely recovery of energy efficiency-related costs;
- (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

14. A touchstone of this EISA standard is the alignment of utility incentives with the delivery of cost-effective energy efficiency. There is an abundance of literature from national energy efficiency organizations that there are three basic components that must be addressed to align utility investments with investment in energy efficiency. They are:

- (a) Program cost recovery;
- (b) Throughput incentive; and
- (c) Performance incentive.

States that are in a leadership position with regard to energy efficiency have in place regulatory policies – a “regulatory infrastructure” if you will -- to incent utilities to perform in this area, and those states all address these three basic components.

15. The existing IRP rules do not address cost recovery nor do they address performance incentives – at all. The regulatory asset accounting treatment for demand-side management (DSM) cost recovery previously proposed by the Staff (Staff witness Lena Mantle) in Case No. ER-2007-0002 has been discontinued in all states except one - Nevada. The problems that plague this regulatory asset approach include:

- (a) The length of time over which an energy efficiency investment is amortized;
- (b) The rate of return on the unamortized balance of the investment;
- (c) The fact that a regulatory asset is not backed by any plant or equipment;

- (d) The fact that carrying substantial regulatory assets on the balance sheet puts downward pressure on the utility's financial rating because of the lack of timely cash flows;
- (e) The concern that the regulatory asset is expected to grow substantially over time (exacerbating the above-problems); and
- (f) The uncertainty arising from future policy changes relative to DSM cost recovery.¹²

16. Not only do the existing IRP rules fail to address a touchstone of the EISA standard, but the prior “consideration” the Staff claims was given in prior IRP proceedings is illusory. Of the six EISA standard policy options reproduced in paragraph 14 above, the Company's last IRP proceeding only considered one of them – policy option (iv) – consideration of adopting rate designs that encourage energy efficiency. The IRP rules do not address incentive mechanism (policy options (i) and (ii)) at all, and notably, they do not address throughput and performance incentive issues which as outlined earlier, is consistently cited in the literature as necessary to align utility incentives with delivering cost-effective energy efficiency programs. Another example where past consideration in Missouri is lacking relates to policy options (iii) and (iv). In these areas, it is well understood that there are rate designs based on principles other than average cost ratemaking (which has thus far been employed in Missouri) that are more conducive to encouraging energy efficiency.

17. Further consideration of this EISA standard relating to rate design respecting energy efficiency, in the upcoming review of the IRP rules, also provides the kind of proceeding that will allow the Governor to provide necessary assurances to the United States Secretary of Energy to qualify Missouri for the additional energy grants contained in the federal stimulus package, an issue addressed above in connection with the EISA standard in section 111(d)(16).

¹² See NAPEE Guide on *“Aligning Utility Incentives With Investment In Energy Efficiency”*

IV. EISA Standard Under 111(d)(18) – Smart Grid Investments
(File No. EW-2009-0290)

18. The Staff acknowledges that the prior state action exemption does not apply to at least a portion of the EISA standard, found in PURPA Section 111(d)(16), which deals with Smart Grid Investments. The EISA standard provides as follows:

(16) (A) IN GENERAL – Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including --

- (i) total costs;
- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance; and
- (vi) societal benefit.

(B) RATE RECOVERY – Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) OBSOLETE EQUIPMENT – Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

19. The Staff asserts the Commission historically allows for the recovery of the costs of smart grid technology such as is set forth in (B);¹³ a statement with which the Company agrees. The Staff also believes that parts (A) and (C) have not yet been addressed by the Commission,¹⁴ a statement with which the Company also agrees. Given this lack of prior

¹³ The Staff's Response, p. 4.

¹⁴ Id.

consideration, the Staff's recommendation is that these EISA standards be considered as part of the upcoming review of the Commission's IRP rules.

20. A docket dealing with rewriting the Commission's IRP rules is not the appropriate forum for determining whether or not to adopt this EISA standard. The Commission's IRP rules set forth the minimum standards governing the scope and objectives of the utility planning process, and some aspects of Smart Grid technology may be involved in a utility's IRP planning. However, the Smart Grid technology offers much more than the opportunity to shave peak demand.¹⁵ The IRP rules do not and cannot address the majority of these characteristics. The mere fact that there is likely to be some discussion of Smart Grid technology in a utility's IRP filing does not mean that an IRP-related docket is the appropriate forum in which to address this EISA standard. Moreover, these items need to be dealt with by the Commission outside of what is already likely to be a highly involved process of rewriting the IRP rules.

21. There are several aspects of this standard that do not fall within the IRP planning process. Part (A) of this standard requires, prior to investing in non-advanced grid technologies, that the utility demonstrate it has considered investment in Smart Grid technologies and that it also demonstrate that it has reviewed several factors, including costs, cost-effectiveness, security, system performance and societal benefit. These are not considerations that fall within the policy objectives of the IRP rules. Instead, the IRP rules deal with analysis of supply-side and demand-side resources and others aspects of planning to meet electrical demand over the next 20 years. Smart Grid technologies are continually changing and will almost certainly change within the three year window between each IRP filing. If these decisions must be set forth in the IRP filing,

¹⁵ Smart Grids encourage customer involvement in grid operations, hold the potential for the grid to resist disruptions and to self-correct problems, and promotes better performing markets the better power quality.

the utility could be forced to re-file its IRP analysis whenever a new technology emerges. Additionally, part (C) deals with Commission authorization of recovery of the costs of obsolete equipment. The Commission's IRP rules merely set forth a *planning* process, but those rules do not address or result in Commission approval of any cost. Unless the Commission intends on changing the focus and intent of its IRP rules, which is entirely unknown, rolling this case into a docket considering the IRP rules does not provide a sufficient mechanism for consideration of this standard.

22. Instead of addressing this standard in the IRP rulemaking, AmerenUE recommends that this case be consolidated with the Smart Grid Information docket (File No. EW-2009-0293) so that the Commission can give consideration to both Smart Grid-related EISA standards in one docket.

V. EISA Standard Under 111(d)(19) – Smart Grid Information
(File No. EW-2009-0293)

23. The Staff acknowledges that the prior state action exemption does not apply to the majority of this EISA standard, which deals with Smart Grid Information. This EISA standard provides as follows:

(A) STANDARD. – All electricity purchasers shall be provided direct access, in written or machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

(B) INFORMATION. – Information provided under this section, to the extent practicable, shall include:

(i) PRICES. – Purchasers and other interested persons shall be provided with information on –

(I) time-based electricity prices in the wholesale electricity market; and (II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) USAGE. – Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.

(iii) INTERVALS AND PROJECTIONS – Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) SOURCES – Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) ACCESS – Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

24. The Staff's recommendation is also to consider this standard as part of its work to rewrite the Commission's IRP rules.

25. For reasons similar to those set forth above, the IRP rule docket is not the appropriate forum for the Commission to determine whether or not it should adopt this EISA standard. For example, this EISA standard discusses providing time-based electricity prices for retail customers and allowing customers to access their own information at any time through the Internet as well as allowing other interested individuals to access non purchaser-specific information in a similar manner. These matters are not integral to the IRP planning process. There may be some overlap between the planning process and use of Smart Grid Information, as there would be respecting Smart Grid Technologies, but this EISA standard is only indirectly related to the purpose of the Commission's IRP rules. Consequently, consideration of this standard should occur in a separate Smart Grid EISA standard docket, and not within a docket respecting the IRP rules.

WHEREFORE, AmerenUE respectfully requests that the EISA standards under Section 111(d)(16) and 111(d)(17) of PURPA be considered by the Commission, as required by the EISA, in the upcoming workshop/docket respecting a rewrite of the Commission's existing IRP rules, and that the EISA standards under Section 111(d)(18) and 111(d)(19) of PURPA be considered by the Commission, as required by the EISA, as part of a consolidated docket in File No. EW-2009-0293.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of March, 2009, served the foregoing Reply either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

/s/ Wendy K. Tatro

Wendy K. Tatro