

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED  
FEB 15 1994  
MISSOURI  
PUBLIC SERVICE COMMISSION

In the matter of the	)	
investigation of the Section	)	Case No. GO-94-171
115 standards of the Energy	)	
Policy Act of 1992	)	

STIPULATION AND AGREEMENT

Come now the parties to the instant proceeding and hereby submit this Stipulation And Agreement in settlement of all the issues believed to be raised by the establishment of this docket by the Missouri Public Service Commission (Commission). In support thereof the parties state as follows:

1. On December 7, 1993, in response to a Staff Motion To Establish A Docket And Schedule An Early Prehearing Conference, the Commission issued an Order Establishing A Docket And Setting An Early Prehearing Conference. Said docket was established to address the matters raised by Section 115 of the Energy Policy Act of 1992 (EPACT). Said section amends Section 303 of the Public Utility Regulatory Policies Act of 1978 (PURPA) to require that the Commission consider before October 24, 1994, the two new natural gas standards "(3) INTEGRATED RESOURCE PLANNING" and "(4) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT"; determine before October 24, 1994, whether or not it is appropriate to adopt such standards; and should the Commission implement either standard "(3) INTEGRATED RESOURCE PLANNING" or standard "(4) INVESTMENTS IN

CONSERVATION AND DEMAND MANAGEMENT", the Commission shall consider the impact that implementation of such standard would have on small businesses engaged in activities respecting demand-side management measures, and shall assure that utilities not have an unfair competitive advantage over such small businesses.

2. The Staff's Motion To Establish A Docket And Schedule An Early Prehearing Conference alludes to Section 310 of PURPA which provides that in considering and making the determinations concerning the Section 303 PURPA standards, the Commission may take into account any appropriate prior determination with respect to such standards which was made in a proceeding after November 8, 1978. Section 310 is significant because the Joint Explanatory Statement Of The Committee Of Conference to EPACT states regarding new gas standards (3) and (4) established by EPACT Section 115:

The Conferees recognize that a number of States have already implemented some or all of the standards encouraged under this section. The Conferees do not intend that such States go through additional rulemaking proceedings simply to satisfy the procedural requirements above. These States are encouraged to demonstrate that they have implemented the standards by referencing actions they have already taken. The Conferees believe that the States have substantial discretion in how they implement the standards encouraged under this section.

It is intended that Integrated Resource Planning (IRP) be considered only for local gas distribution companies who directly serve ultimate users of gas. In examining natural gas supply options under IRP, it is not intended that the sources, conditions, or other characteristics of the upstream supply of gas be analyzed. Rather, the IRP is

intended to examine and compare demand-side options with the general option of additional supplies to end use customers by the local gas distribution company.

The subsection in this section regarding the competitive impact of the implementation of these standards on small businesses has the same intent as that described under section 111.

The Joint Explanatory Statement of the Committee of Conference states in part concerning Section 111 of EPACT:

The subsection dealing with small business protection neither precludes, nor mandates, the adoption of competitive bidding for demand-side management services. By adding this provision, the Conferees do not intend that utilities be precluded from engaging in energy conservation, energy efficiency or other demand-side measures.

3. The Commission's actions last year respecting compliance with Section 111 of PURPA are relevant and will be related in some detail. On January 19, 1993, the Commission issued an Order Establishing A Docket, thereby, creating Case No. EO-93-222 to address the matters raised by Section 111 of EPACT. This section of EPACT amends Section 111(d) of PURPA to require that the Commission consider three new electric standards "(7) INTEGRATED RESOURCE PLANNING", "(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT", and "(9) ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY"; determine whether or not it is appropriate to implement these standards; and if the Commission implements either the "(7) INTEGRATED RESOURCE PLANNING" or "(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT"



standard, the Commission shall consider the impact the implementation of such standard would have on small businesses engaged in activities respecting demand-side management measures, and shall assure that utilities not have an unfair competitive advantage over such small businesses.

The Commission's Order Establishing A Docket respecting Section 111 of PURPA notes that Section 112(a) of PURPA provides that in considering and making the determinations concerning the Section 111(d) PURPA standards, the Commission may take into account any appropriate prior determination with respect to such standards which was made in a proceeding after November 9, 1978. On April 9, 1993, in a Report And Order in Case No. EO-93-222, the Commission found that the electric utility resource planning rules that it had adopted through its 1992 rulemaking were in substantial compliance with EPACT and PURPA.<sup>1</sup>

4. Official notice was taken by the Commission in Case No. EO-93-222, and shall be taken in the instant proceeding, of the record in Case No. EX-92-299 regarding proposed Commission rules 4 CSR 240-22.010 through 22.080 and Case No. OX-92-300 regarding proposed amendments to Commission rules 4 CSR 420-14.010 through 14.040 and proposed rescission of Commission rule 4 CSR 240-14.050. The record in Case Nos. EX-92-299 and OX-92-300 include, among

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<sup>1</sup>Included in the Staff's mailing list during the entirety of the electric utility resource planning rulemaking were the gas utilities under the Commission's jurisdiction. In addition to Laclede Gas Company and Western Resources, Inc. which participated in said rulemaking, Union Electric Company, Missouri Public Service, and St. Joseph Light & Power Company are combination electric and gas companies, and these utilities participated in said rulemaking.

other things, the Notice Of Proposed Rulemaking at 17 Mo.Reg. 886 (July 1, 1992), the Notice Of Proposed Rescission at 17 Mo.Reg. 888 (July 1, 1992), the Notice Of Proposed Rulemaking at 17 Mo.Reg. 889 (July 1, 1992), the Order Of Rulemaking at 18 Mo.Reg. 79 (January 4, 1993), the Order Of Rulemaking at 18 Mo.Reg. 80 (January 4, 1993), and the Code Of State Regulations Update Service (March 29, 1993).

5. As explained below, the Commission has considered and determined in the context of Case Nos. EX-92-299 and OX-92-300, and in the instant docket, whether or not it is appropriate to adopt and implement new gas standards (3) and (4) of Section 303(b) of PURPA. The parties would note that the gas industry, at the impetus of the Federal Energy Regulatory Commission (FERC), has been undergoing and continues to experience fundamental structural changes. Such dynamics have not been encountered as yet in the electric industry to the extent that such changes have been occurring in the gas industry.

6. The Commission, in the context of Case Nos. EX-92-299 and OX-92-300, has determined to adopt and implement new gas standard "(3) INTEGRATED RESOURCE PLANNING" to the extent of pursuing a resource planning rulemaking procedure regarding natural gas utilities as described below. In not adopting new gas standard (3) in entirety, it may be argued that the Commission rejected new gas standard (3). Nonetheless, it is not open to argument whether the Commission will conduct a rulemaking to address implementing

integrated resource planning for gas utilities. The Commission stated in its December 8, 1992 Order Of Rulemaking:

It is also the intent of the commission to enter into a resource planning rulemaking procedure regarding natural gas utilities similar to the rulemaking which is now being concluded regarding electric utilities. This was the commission's thinking prior to the Energy Policy Act becoming law. The commission notes that in addition to the Energy Policy Act amending PURPA regarding federal electric standards, the Energy Policy Act amends PURPA by requiring that the commission consider whether it is appropriate to implement federal gas standards on - 1) integrated resource planning and 2) investments in conservation and demand management. The commission plans to proceed with reasonable dispatch on these matters.

18 Mo.Reg. at 85.

7. The breadth of the coverage of the Commission's anticipated resource planning rules for gas utilities has not been determined. Examples of the scope of the Commission's electric utility resource planning rules compared to the new PURPA electric standards established by EPACT follow. These examples indicate that a standard similar to the new PURPA standard (3) for gas utilities has been rejected, at least in part, by the Commission.

The electric utility resource planning rules adopted by the Commission did not implement in entirety new standard "(7) INTEGRATED RESOURCE PLANNING". Respecting new standard (7), the Commission's rules do not apply to all electric utilities within the Commission's jurisdiction, but are limited to "include those electric utilities both with their own generating capacity



and with substantial retail sales to a considerable number of Missouri customers". 18 Mo.Reg. at 92. Furthermore, respecting covered electric utilities, there is a subsection of the rules which permits the granting of waivers or variances, 4 CSR 240-22.080(11), about which the Commission stated:

. . . the commission emphasizes the use of waivers or variances, provision for which are included in the Proposed Rules, should the various utilities find that full compliance is either effectively impossible or economically unjustified.

18 Mo.Reg. at 85.

The commission notes again that the instant rule includes a waiver or variance section 4 CSR 240-22.080(11), which allows any of the covered utilities to obtain a waiver or variance for good cause shown. The intent of this section is to provide sufficient flexibility respecting the individual circumstances of the affected utilities.

18 Mo.Reg. at 92.

Under 4 CSR 240-22.080, the resource acquisition strategy of each affected utility must be updated on a regular basis (every three (3) years), and must be officially approved by the utility. The resource acquisition strategy of each affected utility is subject to public participation and comment after being filed with the Commission. The Commission is required by 4 CSR 240-22.080 to establish a docket for the purpose of receiving each compliance filing and reports or comments of the Staff, the Office of the Public Counsel (Public Counsel), and intervenors. 4 CSR 240-22.080 provides for substantive participation by the Staff, Public Counsel, and intervenors in compliance filings.

The Commission rejected adopting for electric utilities what is clearly an element of new gas standard (3), i.e., "contain a requirement that the plan be implemented after the approval of the State regulatory authority". The language in new electric standard (7) is not as explicit as is the language in new gas standard (3). The language in new electric standard (7) is: "contain a requirement that the plan be implemented." The Commission's reasons for rejecting "approval" appear at 18 Mo.Reg. at 84-85, 91-92 and will not be repeated here.

8. The Commission, in the context of Case Nos. EX-92-299 and OX-92-300, has determined to adopt and implement new gas standard "(4) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT" to the extent of pursuing a resource planning rulemaking procedure regarding natural gas utilities as described above. In not adopting new gas standard (4) in entirety, it may be argued that the Commission rejected new gas standard (4). Nonetheless, it is not open to question whether the Commission will address energy conservation and demand-side management expense recovery, earnings, and ratemaking in its integrated resource planning rulemaking for gas utilities. The electric utility resource planning rules adopted by the Commission did not implement in entirety new standard "(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT". The specifics of the Commission's gas utility resource planning rules have not been determined, but the Commission's electric utility resource planning rules compared to the new PURPA electric standards established by EPACT indicate that a standard similar to



the new PURPA standard (4) for gas utilities has been rejected, at least in part, by the Commission.

Regarding electric utility resource planning, 4 CSR 240-22.080(2) provides that the electric utility's compliance filing may include a request for nontraditional accounting procedures and information regarding any associated ratemaking treatment to be sought by the utility for demand-side resource costs. The Commission stated in its December 8, 1992 Order Of Rulemaking:

. . . The commission does not believe that it is either appropriate or arguably even lawful for it to engage in ratemaking in a rulemaking proceeding . . . . These matters should more appropriately be dealt with in a non-rulemaking proceeding.

Although the commission may authorize a utility to take the specific action for which the utility has requested commission authorization, it has been the general approach or policy of the commission to decline to make a ratemaking determination outside the context of a rate case . . . .

18 Mo.Reg. at 93.

. . . .

. . . serious statutory and precedential issues exist as to the commission's authority to engage in what may be termed single-issue ratemaking, the preallocation of costs and the granting of a presumption of prudent action by utility management . . . .

18 Mo.Reg. at 84.

. . . .

The commission notes . . . concern about the phrase "nontraditional accounting procedures and information regarding any associated ratemaking treatment" being read narrowly. The commission's view of this matter is accurately reflected by the comments of OPC and staff . . . .

18 Mo.Reg. at 93.

9. No small business engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures, or organization/association of such small businesses, submitted comments or reply comments, or appeared at the hearing in Case Nos. EX-92-299 and OX-93-299. No such small business or organization/association of such small businesses filed an application for intervention in the instant proceeding.

It may be argued that the Commission's promulgation of gas utility resource planning rules and amendment of its promotional practices rules will likely have a positive impact on such small businesses. For example, the electric utility resource planning rules require that each affected electric utility consider and analyze demand-side efficiency and energy management measures on an equivalent basis with supply-side alternatives in the resource planning process. (4 CSR 240-22.010(2)(A)). The amended promotional practices rules state that nothing contained in this chapter of rules should be construed to prohibit the provision of consideration that may be necessary to acquire cost-effective demand-side resources. (4 CSR 240-14.010(5)).

10. Assuming the Commission proceeds respecting the gas utility resource planning rulemaking as it did respecting the electric utility resource planning rulemaking, the "possible schedule for compliance with Section 115" of EPACT, which is Appendix 1 to the Staff's Motion To Establish A Docket And Schedule An Early Prehearing Conference in the instant docket, permits such small businesses to participate in the rulemaking workshops and submit comments and testify before the Commission during the rulemaking for gas utility resource planning.

11. Regarding the PURPA Section 303(a) requirement that consideration of the standards be made after public notice and hearing, the parties note that the Commission's statement in its December 8, 1992 Order Of Rulemaking that it intends to enter into a resource planning rulemaking regarding gas utilities occurred after public notice and hearing. The parties also note State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Serv. Comm'n, 776 S.W.2d 494 (Mo. App. 1989) and that no party is requesting a hearing in the instant proceeding.

12. Fourteen months have transpired since the Commission's December 8, 1992 Order Of Rulemaking in Case Nos. EX-92-299 and OX-92-300. The matters addressed by those proceedings, EPACT, and PURPA are dynamic, and will continue to be dynamic. Thus, notwithstanding Paragraphs "1." through "11." above, each party may argue to the Commission in the rulemaking proceeding contemplated above that (1) the Commission should not adopt any rules for gas resource planning as proposed by the



Commission or any party, or (2) the Commission should adopt rules different in whole or in part from those proposed by the Commission or any party, or (3) some combination of points (1) and (2).

13. The Staff may provide to the Commission an explanation of its rationale for entering into this Stipulation And Agreement and whatever further explanation the Commission requests. The Staff's explanation shall not become a part of the record of this proceeding and shall not bind or prejudice the Staff in any future proceeding or in this proceeding in the event the Commission does not approve the Stipulation And Agreement. It is understood by the signatories hereto that any rationales advanced by the Staff are the Staff's own and are not acquiesced in or otherwise adopted by any other signatory hereto.

14. None of the parties to this Stipulation And Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Stipulation And Agreement, or for which provision is made in this Stipulation And Agreement.

15. This Stipulation And Agreement represents a negotiated settlement. Except as specified herein, the signatories to this Stipulation And Agreement shall not be prejudiced, bound

by, or in any way affected by the terms of this Stipulation And Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation And Agreement in the instant proceeding, or in any way condition its approval of same.

16. The provisions of this Stipulation And Agreement have resulted from negotiations among the signatories and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation And Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

17. In the event the Commission accepts the specific terms of this Stipulation And Agreement, the signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1986; their respective rights to the readings of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1986. This waiver applies only to a Commission Report And Order issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation And Agreement.

**WHEREFORE** the parties to Case No. GO-94-171 agree that the Missouri Public Service Commission has attained compliance

with, and recommend that it issue an order finding that it has attained compliance with, Section 115 of the Energy Policy Act of 1992 and Section 303 of the Public Utility Regulatory Policies Act of 1978 by having (1) considered before October 24, 1994, the two new natural gas standards established by Section 115 of EPACT, and (2) determined before October 24, 1994, that it will address the implementation of integrated resource planning for gas utilities through a future rulemaking. Said consideration and determination occurred in the context of Case Nos. EX-92-299 and OX-92-300, and in the instant docket. Said rulemaking for gas utility resource planning will commence later this year, and it is anticipated will continue into 1995. Each party may argue in the rulemaking proceeding that the Commission should not adopt any gas utility resource planning rules, or the rules to be adopted should be different from those that are proposed, or some combination of both.

Respectfully submitted,

Joseph H. Raybuck Jr., SD  
Joseph H. Raybuck  
Ronald K. Evans  
Union Electric Company  
1901 Chouteau  
P.O. Box 149  
St. Louis, MO 63166

William G. Riggins Jr., SD  
William G. Riggins  
Kansas City Power & Light Co.  
1201 Walnut  
Kansas City, MO 64106

Steven Dottheim  
Steven Dottheim  
Attorney for the Staff of the  
Missouri Public Service  
Commission  
P.O. Box 360  
Jefferson City, MO 65102

Lewis R. Mills  
Lewis R. Mills  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102



Gary W. Duffy

Gary W. Duffy  
Brydon, Swearngen & England, P.C.  
Attorney for Missouri Public  
Service, a division of  
UtiliCorp United, Inc.;  
Associated Natural Gas  
Company; Missouri Gas Energy;  
United Cities Gas Company;  
and St. Joseph Light & Power  
Company  
312 E. Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102

James C. Swearngen by GUD

James C. Swearngen  
Brydon, Swearngen & England, P.C.  
Attorney for The Empire  
District Electric Company  
312 E. Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102

Gerald E. Roark by SD

Richard S. Brownlee, III  
Gerald E. Roark  
Hendren & Andrae  
Attorneys for Williams Natural  
Gas Company  
235 East High St.  
Jefferson City, MO 65101

James M. Fischer  
James M. Fischer  
Attorney for Fidelity Natural  
Gas, Inc., Atmos Energy Corp.,  
and Tartan Energy Co.  
102 East High St.  
Jefferson City, MO 65101

Thomas M. Byrne by SD

Thomas M. Byrne  
Mississippi River Transmission  
Corporation  
9900 Clayton Road  
St. Louis, MO 63124

Michael C. Pendergast by SD

Michael C. Pendergast  
Laclede Gas Company  
720 Olive Street  
St. Louis, MO 63101

Diana M. Schmidt by SD

Diana M. Schmidt  
Peper, Martin, Jensen,  
Maichel & Hetlage  
Attorney for Adam's Mark Hotels;  
American National Can Company;  
Anheuser-Busch Companies, Inc.;  
Chrysler Motors Corporation;  
Ford Motor Company; General  
Motors Corporation; MEMC  
Electronic Materials, Inc.;  
McDonnell Douglas Corporation;  
Monsanto Company; Nooter Corpor-  
ation; Precoat Metals; and  
Ralston Purina Company  
720 Olive St., 24th Floor  
St. Louis, MO 63101

Richard W. French by SD

Richard W. French  
French & Stewart  
Attorney for Trigen-Kansas City  
District Energy Corp.  
1001 E. Cherry St., Suite 302  
Columbia, MO 65201

J. Michael Peters  
J. Michael Peters  
Western Resources, Inc.  
818 Kansas Avenue  
Topeka, KS 66612

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 15th day of February, 1994.

Steven Dotson

Service List for Case No. GO-94-171

William M. Barvick  
Attorney at Law  
240 East High Street  
Suite 202  
Jefferson City, MO 65102

Richard S. Brownlee  
Attorney at Law  
235 East High Street  
P.O. Box 1069  
Jefferson City, MO 65102

Thomas M. Byrne  
Attorney at Law  
Mississippi River Transmission Corp.  
9900 Clayton Rd.  
St. Louis, MO 63124

Stuart W. Conrad  
Attorney at Law  
2600 Mutual Benefit Life Bldg.  
2345 Grand Avenue  
Kansas City, MO 64108

Gary W. Duffy  
Brydon, Swearingen & England  
P.O. Box 456  
312 E. Capitol Ave.  
Jefferson City, MO 65102

Sharon K. Euler  
Assistant City Attorney  
2700 City Hall  
414 East 12th St.  
Kansas City, MO 64106

James M. Fischer  
Attorney at Law  
102 East High Street  
Suite 200  
Jefferson City, MO 65101

Richard W. French  
French & Stewart Law Offices  
1001 East Cherry Street  
Suite 302  
Columbia, MO 65201

Michael C. Pendergast  
Laclede Gas Company  
720 Olive St.  
St. Louis, MO 63101

J. Michael Peters  
Western Resources, Inc.  
P.O. Box 889  
818 Kansas Avenue  
Topeka, KS 66601

Joseph H. Raybuck  
Union Electric Company  
P.O. Box 149 (M/C 1310)  
St. Louis, MO 63166

William G. Riggins  
Kansas City Power & Light Company  
1201 Walnut, P.O. Box 418679  
Kansas City, MO 64141



William G. Riggins  
Kansas City Power & Light Company  
1201 Walnut, P.O. Box 418679  
Kansas City, MO 64141

Diana M. Schmidt  
Peper, Martin, Jensen,  
Maichel & Hetlage  
720 Olive St., 24th Fl.  
St. Louis, MO 63101

James C. Swearengen  
Brydon, Swearengen & England  
P.O. Box 456  
312 E. Capitol Ave.  
Jefferson City, MO 65102