

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

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

**THE RESPONSE OF THE EMPIRE DISTRICT ELECTRIC COMPANY TO
STAFF'S MOTION TO OPEN RULEMAKING DOCKET**

The Empire District Electric Company ("Empire" or "Company"), through its undersigned counsel, hereby submits the following response in opposition to the *Motion to Open Rulemaking Docket* ("Motion") filed by the Staff ("Staff") of the Missouri Public Service Commission ("Commission") on October 31, 2006. In that filing, Staff proposed that the Commission open a single rulemaking docket to address any and all rulemaking considerations related to Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0495, EO-2005-0496, and EO-2006-0497. Staff's Motion also requested that the Commission order parties and/or Staff to file, on or before April 30, 2007, either: 1) proposed rules that address two standards that were included in the "Energy Policy Act of 2005" ("EPAAct 2005") – time-based metering/communications and interconnection – that are currently under consideration in Case Nos. EO-2006-0496 and EO-2006-0497, respectively; or 2) pleadings explaining why rulemaking is not required to bring the State of Missouri into compliance with those standards.

Empire opposes Staff's motion because the Company believes no rulemaking is necessary to bring the State of Missouri's net metering standard

into compliance with the federal standard, which was enacted as part of EAct 2005 and was codified as 16 U.S.C §2621(d)(11). Missouri's net metering standard, which comprises both Section 386.887, RSMo, and 4 CSR 240 20.065, is sufficiently comparable to the federal standard that the Commission can determine, as a matter of law, that no further action is required to bring Missouri into compliance with EAct 2005.

In addition, Empire believes that Staff's proposal to open a single rulemaking docket to consider the net metering standard that is the subject of this case as well as the federal standards under consideration in Case Nos. EO-2006-0494, EO-2006-0495, EO-2006-0496, and EO-2006-0497 would prove unwieldy for both the Commission and any parties who may choose to participate in such a docket.

Background of the Federal Net Metering Standard

1. EAct 2005 includes provisions that require each state utility regulatory authority to consider several standards related to electric energy and to determine if any or all of the standards should be adopted for electric utilities over which the regulatory authority has jurisdiction. The statutory language that imposes this requirement is as follows:

(a) Consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. . . Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

16 U.S.C. § 2621(a).

2. What the Commission must do to fulfill these obligations is set out in 16 U.S.C. §2621(c):

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law:

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) . . . such authority or nonregulated electric utility shall state in writing the reasons therefore.

3. Taken together, the two statutes quoted above show that, although each state is required to *consider* the federal standards, Congress did not require each state to *adopt* those standards. For regulated electric utilities, the decision to adopt or decline to adopt the federal standards is left to the discretion of the utility regulatory authority in each state.

4. Among the standards adopted in EPAAct 2005 was one pertaining to “net metering,” which the statute describes as follows:

Net metering. Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. 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.

16 U.S.C. § 2621(d)(11). In response to a motion filed by Staff, the Commission opened the current case to consider the federal net metering standard and decide if it should be adopted in Missouri.

Net Metering in Missouri

5. The language of Section 2621(d)(11) reflects Congress intent to achieve a particular result from net metering – that, during each billing period, power delivered from a consumer to an electric utility be used to offset power delivered from the utility to the consumer. The statute, however, did not prescribe the use of any particular type of instrumentality or metering device or the method that must be used to achieve the desired result. It also did not prescribe the rate (e.g., the retail energy rate) at which power delivered from the consumer to the utility would be credited to the consumer's bill. All those decisions were left to the Commission's discretion.

6. In 2002, the Missouri Legislature passed the "Consumer Clean Energy Act," which required any "retail electric supplier"¹ operating in the state to offer net metering to any "customer-generator"² that operated a "qualified net metering unit."³ The statute also established a cap for net metering service provided by retail electric suppliers: an electric supplier's obligation to provide net metering to additional customers ceases as soon as the total generating capacity of all net metering units owned by customer-generators equals or exceeds the

¹ Section 386.887(6), RSMo.

² Section 386.887(2), RSMo.

³ Section 386.887(5), RSMo.

lesser of 10,000 kWh or one-tenth of one percent of the capacity necessary to meet the electric supplier's aggregate peak demand for the previous year.⁴

7. The Commission adopted 4 CSR 240-20.065 in 2003 to implement the net metering requirements of Section 386.877, RSMo. The rule requires all electric suppliers to develop a tariff or rate schedule for net metering and to make that service available to qualified customers on a first-come, first-served basis subject to the cap included in the statute. Pursuant to the statute and in accordance with the Commission's rule, Empire and other electric utilities operating in Missouri have implemented tariffs providing for net metering within their respective service territories and are currently providing that service to their customers.

8. As Empire noted earlier in this pleading, the federal standard prescribes an objective – providing a means for qualifying customers to have the value of electricity that they generate and deliver back to the utility credited to their monthly bill – but leaves to the states the details of how best to achieve that objective. Missouri's net metering standard already accomplishes that objective. It requires that net metering customers receive a credit to their respective monthly electric bills in amounts that reflect the net value of power the customer-generators delivered to their electric power suppliers. The rates, terms, and conditions that govern net billing transactions are to be established on a company-by-company basis through tariff filings.

9. The Commission's net metering rule requires that the flows of electricity between the electric power supplier and the customer-generator be

⁴ Section 386.887(5), RSMo.

measured “using metering capable of such function – either by a single meter capable of registering the flow of electricity in two (2) directions or by using two (2) meters.”⁵ Although some parties to this case have argued in previous filings that the ability to use two meters somehow transforms net metering into “net billing,” and thereby violates the spirit, if not the letter, of the federal standard,⁶ that argument elevates form over substance. It is the objective to be achieved that defines net metering, not the number of meters used to achieve that objective. The argument also ignores the fact that the federal net metering standard does not mandate the use of any particular kind of metering equipment or that one meter be used instead of two.

10. In their previous filings, some of the parties to this proceeding also have argued that further action in this case is required because the Commission’s rule is not broad enough to comply with the federal standard. But that argument conflates what the parties’ want the state standard to be with the actual requirements of the federal standard. The net metering standard adopted by Congress only requires that net metering service be provided “upon request.” Missouri’s net metering standard includes that requirement. And although the Missouri’s standard includes a cap that, if imposed, means that net metering service is not available to all customers, none of the parties to this case has suggested that any customer who wants net metering has been denied that service. Missouri’s standard, therefore, adequately meets the current demand for net metering service and there is no need for a rulemaking docket to consider

⁵ 4 CSR 240-20.065(5)(A)(1)(B).

⁶ See, e.g., *Department of Natural Resources’ Responses to Questions Posed in the August 17, 2006, Commission Order*, Case No. EO-2006-0493, at p. 3.

whether the current cap on such service can or should be modified or eliminated. Moreover, even with the cap, Missouri's current net metering standard is reasonably comparable to the federal standard and, therefore, satisfies all of the requirements of EAct 2005.

Further Action Regarding Net Metering That is Required to Bring Missouri Into Compliance with the Federal Standard

11. Staff's Motion suggests that further action by the Commission – in the form of a large, unwieldy rulemaking docket convened to consider net metering and other federal energy standards included in EAct 2005 – is necessary to bring Missouri into compliance with federal law. Empire disagrees. Because the Commission has addressed the issue of net metering in a rulemaking proceeding in the recent past,⁷ Empire believes that re-plowing the same ground with another rulemaking proceeding on the same subject is neither required nor desirable.

12. Under the "prior state action" provisions of EAct 2005, the Commission need not take any further or additional action regarding the net metering standard if, prior to the enactment of the statute in August 2005:

- (1) the State has implemented for such [electric] utility the standard concerned (or a comparable standard);
- (2) the State regulatory authority for such State . . . has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard); or
- (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.⁸

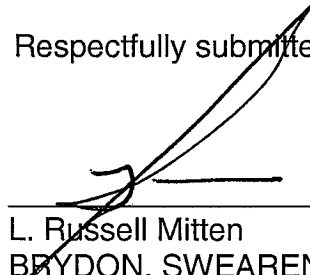
⁷ 4 CSR 240-20.065 became effective in August 2003.

⁸ 16 U.S.C. § 2622(d).

13. Section 386.887, RSMo, and the Commission's rule implementing that statute each qualifies as "prior state action" under EPAAct 2005. The Commission, therefore, is free to determine that, because a comparable net metering standard already exists in Missouri, no further action regarding the federal standard is necessary. Furthermore, Empire believes that such a determination, which is a question of law and not fact, can be made in the current case based solely on the pleadings. This would obviate the large and cumbersome rulemaking docket that Staff proposes in its Motion.

WHEREFORE, for the reasons stated above, Empire urges the Commission to reject Staff's suggestion that a rulemaking docket be opened to address any and all rulemaking considerations related to the net metering standard that is the subject of the current case as well as the other federal energy standards that are the subjects of Case Nos. EO-2006-0494, EO-2006-0495, EO-2006-0496, and EO-2006-0497.

Respectfully submitted,



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Certificate of Service

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