

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

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. )

Case No. EO-2009-

**MOTION TO ESTABLISH A CASE, PROVIDE NOTICE AND  
SCHEDULE A PREHEARING CONFERENCE**

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and respectfully requests that the Commission establish a case, provide notice of this matter, set an intervention deadline and schedule an early prehearing conference, all for the purpose of establishing a record of its consideration and determination of whether or not it is appropriate to implement the “Rate Design Modifications To Promote Energy Efficiency Investments” Standard established by Section 532 (“Energy Efficiency Programs”) of the Energy Independence and Security Act of 2007. In support thereof, the Staff states as follows:

1. On December 19, 2007, the Energy Independence and Security Act of 2007 (“EISA”)<sup>1</sup> was signed into law. Among many other things, EISA amended various parts of the Public Utility Regulatory Policies Act of 1978 (“PURPA”).<sup>2</sup> PURPA’s general objectives are to encourage: (i) conservation of electric energy, (ii) efficiency in use of facilities and resources by electric utilities, and (iii) equitable rates to consumers of electricity.<sup>3</sup>

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<sup>1</sup> Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492 (2007)

<sup>2</sup> Appears generally in 16 U.S.C. Section 2601, et seq. However, various provisions appear elsewhere in the United States Code.

<sup>3</sup> PURPA Section 101

2. PURPA was previously amended by the Energy Policy Act of 2005 (“EPAct 2005”), which became law on August 8, 2005, and established five new PURPA standards; *i.e.*, Net Metering, Fuel Sources, Fossil Fuel Generation Efficiency, Time-Based Metering And Communications, and Interconnection (PURPA Section 111(d)(11) through (15), respectively). EPAct 2005 required the Commission to consider each of these standards and to determine whether or not to implement them. The Commission did so in separate cases,<sup>4</sup> and issued Report And Orders concerning each of the standards on July 12, 2007.

3. The enactment of EISA in late 2007 established four additional PURPA standards for electric utilities. The first two -- Integrated Resource Planning, (“IRP”) and Rate Design Modifications To Promote Energy Efficiency Investments (“Rate Design Modifications”) -- are found in EISA Section 532(a)(16) and (17), respectively. The other two standards -- Consideration Of Smart Grid Investments (“Smart Grid Investments”) and Smart Grid Information -- appear in EISA Section 1307(a)(16) and (17), respectively. The assignment of the number 16 to two of the new PURPA standards and the number 17 to the other two is likely erroneous.<sup>5</sup>

4. The statutory procedure for addressing the EISA standards is analogous to the one prescribed for the EPAct 2005 standards. The Commission is to consider and determine whether or not it is appropriate to implement the new standards with respect to each jurisdictional electric utility, as a means of carrying out PURPA’s general objectives.<sup>6</sup> EISA establishes deadlines for

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<sup>4</sup> Case Nos. EO-2006-0493 through 0497

<sup>5</sup> EISA amended Section 112(c) of PURPA, adding a reference to “paragraphs (16) through (19)” of PURPA Section 111(d). These would be the appropriate numbers had all four of the new PURPA standards been numbered in sequence. EISA also amended PURPA Sections 112(b) and 112(d), referring to “paragraphs (17) through (18)” of PURPA Section 111(d). There is no paragraph (18) or paragraph (19) in EISA to describe the new electric utility standards. (See EISA Section 1307(b).)

<sup>6</sup> EISA imposes similar requirements on nonregulated electric utilities.

both the commencement of the Commission's considerations and its determinations of whether or not to adopt the new standards. However, the deadlines are specified only in EISA Section 1307 dealing with "Smart Grid," and the references in that section are to "paragraphs (17) through (18) of section 111(d)" of PURPA. (EISA Section 1307(b)(1)). As noted earlier, PURPA Section 111(d) contains two paragraphs labeled "(17)." Moreover, there is no electric utility standard in EISA labeled "(18)." Thus, while it appears that the deadline applies at least to the Smart Grid Information Standard, it generally is not clear which standards are subject to the specified deadlines. In light of the ambiguity, the Staff suggests that the Commission put all four standards on the same track for consideration and determination. Specifically, EISA calls for the Commission to begin consideration, or to set a hearing date for such consideration, within one year after enactment of the standard; *i.e.*, by December 19, 2008. Not later than two years after enactment (*i.e.*, by December 19, 2009), the Commission is to complete its consideration and to make its determination with respect to the standard.<sup>7</sup>

5. If the Commission decides to adopt a particular standard, it would then need to address specifics as to the implementation of that standard. Therefore, the Staff recommends that the Commission consider the four new standards by establishing a separate case for each of them. This is the same approach employed by the Commission when it addressed the standards established by EPAct 2005. Any or all of the EISA cases could be consolidated at a later time if the Commission finds it appropriate to do so. The Staff believes separate dockets will provide the Commission the greatest flexibility.

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<sup>7</sup> If the Commission fails to consider any of the standards in compliance with these deadlines, the statute directs that the Commission is to consider and make a determination with respect to any such standard in the first rate proceeding commenced after the date three years after the December 19, 2007 date of enactment of the standard(s), unless the Commission has already done so. (PURPA Section 112(c); 16 U.S.C. Section 2622(c)).

6. The Staff requests that the instant case be created for the purpose of establishing a record of the Commission's consideration and determination related to whether to adopt the Rate Design Modifications Standard; *i.e.*, new PURPA Section 111(d)(17), established by Section 532(a)(17) of EISA. Specifically, unless exempted by prior state action (see paragraph 7 below), the Commission is required to consider and determine whether to adopt the following:

(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 investments.

(B) POLICY OPTIONS – In complying with subparagraph (A), each State regulatory authority and each nonregulated utility 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 1 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; and

(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.

PURPA Section 111(d)(17).

7. In general, under new PURPA Section 112(d) - Prior State actions, the obligation to consider a particular new standard does not apply and no new consideration process is required if, prior to August 8, 2005: (i) the state implemented the standard (or a comparable standard) for electric utilities under the Commission's jurisdiction, (ii) the Commission conducted a proceeding considering the implementation of the standard (or a comparable standard) for electric utilities under its jurisdiction, or (iii) the state's legislature voted on implementation of the standard (or a comparable standard) for electric utilities under the Commission's jurisdiction.<sup>8</sup> Unfortunately, as is the case with the compliance deadlines set out in EISA, the statute is ambiguous regarding the new standards to which the Prior State Action exemption may apply. The Staff intends to look into this matter further and recommends that the Commission direct those seeking intervention to weigh in on the issue of whether the Commission may invoke -- and if so, whether it should invoke -- the Prior State Actions exemption in the case of any or all of the four new electric utility standards created by EISA.

8. The Staff proposes that the Commission schedule joint early prehearing conferences in all four EISA-related cases, for the purpose of developing procedural schedules that will permit the Commission to meet the new PURPA requirements. The procedural schedule specific to the instant case should provide for the submission of testimony regarding the appropriateness of implementing the Rate Design Modifications Standard and, if relevant, specifics as to its implementation.

9. The early prehearing conference will also allow parties the opportunity to explore whether an agreement can be reached in this case and submitted to the Commission, recommending either:

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<sup>8</sup> In the previous EPAct 2005 cases, the Commission determined that the Prior State Actions exemption was applicable with respect to four of the five PURPA standards. (See Report And Orders, issued July 12, 2007 in Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0495, EO-2006-0496, and EO-2006-0497.)

- a. no further action with respect to the Rate Design Modifications Standard due to the Commission qualifying for no further action under new PURPA Section 112(d) Prior State Actions; or
- b. further Commission action with respect to the Rate Design Modifications Standard in the instant case; or
- c. further Commission action with respect to the Rate Design Modifications Standard in some other case. For example, the Commission could:
  - i. open an “EX” (rulemaking) case, so that further evidence can be provided and considered for purposes of deciding the extent to which, if at all, implementation of the standard should be, or is required to be, in the form of a rule; or
  - ii. direct individual electric utilities to include testimony regarding the need for and, if relevant, the extent of applicability of that standard, either in a pending general rate case or in its next general rate case filing.

10. Attached hereto as Appendix A is a list of persons and entities to which this pleading is being mailed or e-mailed, including rural electric cooperatives and municipal electric utilities because of the jurisdiction of the Commission under Section 386.887 RSMo. This approach is the Staff’s attempt to provide wide distribution of this pleading. However, the list is not intended to imply that each person or entity on this list should be a party to this proceeding, nor is it meant to imply that a person or entity not on this list should be excluded from this proceeding.

WHEREFORE, the Staff requests that the Commission: (1) create a case for the purpose of establishing a record of its consideration and determination of the matter of adopting the Rate Design Modifications To Promote Energy Efficiency Investments Standard of Section 532 of the Energy Independence and Security Act of 2007 (new PURPA Section 111(d)(16)); (2) provide notice of this matter; (3) set an intervention deadline; (4) direct those seeking intervention to provide, as part of their applications or motions for intervention, written comments as to whether

the Commission may invoke -- and if so, whether it should invoke -- the Prior State Actions exemption with respect to the newly established Rate Design Modifications To Promote Energy Efficiency Investments Standard; and (5) schedule an early prehearing conference to be held jointly with the early prehearing conferences in the other cases opened to address each of the other three electric utility standards established by EISA.

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to those individuals on the attached list this 15th day of December 2008.

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