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September 15, 2006

FILED

SEP 15 2006

Public Service Commission
Governor Hotel
200 Madison Street
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Missouri Public
Service Commission

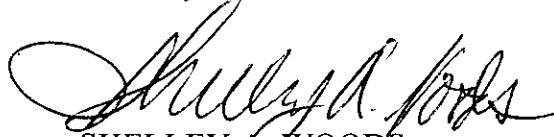
RE: *In the Matter of the Consideration of Adoption of the PURPA Sections
Case Nos. EO-2006-0495; EO-2006-0494; EO-2006-0493; and EO-2006-0497*

Dear Sir/Madam:

Enclosed for filing please find an original and 9 copies of Missouri Department of Natural Resources' Responses to Questions Posed in the August 17, 2006, Commission Order in the four cases listed above. Please stamp "filed" on the extra copy for my files. Thank you.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General


SHELLEY A. WOODS
Assistant Attorney General

SAW:mg
Enclosure
c: Counsel of Record

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

FILED³
SEP 15 2006

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

Missouri Public
Service Commission

DEPARTMENT OF NATURAL RESOURCES' RESPONSES TO QUESTIONS
POSED IN THE AUGUST 17, 2006, COMMISSION ORDER

1. Can this case be closed based on "prior state actions" as provided in Section 1251 (b)(3) of the Act [16 U.S.C. 2622(d)], and why or why not?

Under Section 1251 (b)(3) of the Energy Policy Act of 2005 (EPAAct), 16 U.S.C. § 2622(d), the obligation to consider the standard does not apply and no new consideration process is required if prior to the enactment of the EPAAct: (i) the state implemented the standard or a comparable standard for electric utilities under the Commission's jurisdiction; (ii) the Commission has already conducted a proceeding considering the implementation of the standard or comparable standard for electric utilities under its jurisdiction; or (iii) the state's legislature voted on implementation of the standard or comparable standard for electric utilities under the Commission's jurisdiction.

While it may appear that § 386.887, RSMo (Cum. Supp. 2005) meets one or more of the criteria that would constitute "prior state action," there are significant differences between the net metering provisions of EPAAct and the Missouri statute that raise questions about the "comparability" of Missouri's net metering standard.

The definition of net metering in Missouri's statute is not consistent with the generally accepted definition of net metering recognized by other states and entities. For example, in its August 10, 2006. "Connecting to the Grid" newsletter, the Interstate Renewable Energy Council (IREC)¹ reported that:

Missouri is one of only 10 U.S. states without any form of net metering. Under a dual-metering arrangement, Missouri provides for the interconnection of wind, biomass, fuel cell and photovoltaic (PV) systems up to 100 kilowatts (kW) in capacity. (Although the relevant statute refers to this arrangement as "net metering", it is actually dual metering.) Interconnection standards have been adopted to accommodate dual-metered systems.

Because of its dual metering structure, Missouri's standard also does not "offset electric energy provided by the electric utility to the electric consumer during the applicable billing period." § 1251 of EPAAct, 16 U.S.C. § 2621(d)(11).

Nor does Missouri define "net metering" as does the federal law. Missouri defines "net metering" as:

a measurement of the difference between the electric energy supplied to a customer-generator by a retail electric supplier and the electric energy generated by

¹ The Interstate Renewable Energy Council was formed in 1982 as a non-profit organization. On its website, IREC identifies its mission "to accelerate the sustainable utilization of renewable energy sources and technologies in and through state and local government and community activities." IREC's members include "state energy offices, city energy offices, other municipal and state agencies, national laboratories, solar and renewable organizations and companies, and individual members. IREC works with many partners including the federal government, national environmental and municipal organizations, regulatory commissions, state-appointed consumer representatives, energy service providers, utility groups, universities and research institutes." <http://www.irecusa.org/home/whoweare.html>

a customer-generator that is delivered to a local distribution system in the same point of interconnection.

The EPAct, on the other hand, defines "net metering" for purposes of the Act as: ... 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).

The Missouri statute provides that the electricity generated and consumed by the customer-generator is measured individually and is used to determine the "value of electric energy." §386.887.2(7), RSMo. This is more accurately described as "net billing." The electricity used by the customer is not offset by the electricity the customer supplies to the grid during the same billing period; instead, the customer pays retail rates based on time of use, while the utility pays wholesale for electricity supplied to the grid. Section 386.887.3, RSMo provides in pertinent part:

Any time of use or other rates charged for electric energy sold to customer-generators shall be the same as those made available to any other customers with the same net electric energy usage pattern including minimum bills and service availability charges. Rates for electric energy generated by the customer-generator from a qualified net generating unit and sold to the retail electric supplier or its

wholesale generator shall be the avoided cost (time of use or nontime of use) of the generation used by the retail electric supplier to serve its other customers.

Section 386.887.4(3)(b), RSMo further provides:

If the value of the electric energy generated by the customer-generator exceeds the value of the electric energy supplied by the retail electric supplier, the customer-generator . . . shall be credited for the excess value of the electric energy generated ...with this credit appearing on the bill for the following billing period.

The Department recognizes that many states with net metering have adopted restrictions or limitations regarding various aspects of the standard, such as type of energy source, size of generating unit and an overall cap on energy and/or capacity achieved through customer-owned generation units. However, for purposes of this filing, the Department only compares similar limitations in Missouri's standard with the EAct standard that net metering be made available upon request to "any electric consumer that the electric utility serves" with "an eligible on-site generating facility." § 1251(a)(11) of EAct, 16 U.S.C. § 2621(d)(11). (Emphasis supplied.)

Missouri's law does not provide for net metering service to any customer with eligible on-site generation as it limits net metering to "qualified net metering units," which must meet the following requirements among others: (a) is a hydrogen fuel cell or powered by sun, wind or biomass (§ 386.887.2(5)(b), RSMo); (b) has a generating capacity of no greater than one hundred kilowatts; (§ 386.887.2(5)(b), RSMo); and (c)

meets "the lesser of ten thousand kilowatts or one-tenth of one percent of the capacity necessary to meet the company's aggregate customer peak demand." § 386.887.5, RSMo.

Consequently, for all of the reasons outlined above, Missouri's law, § 386.887, RSMo is not comparable to § 1251(a)(11) of EPAct, 16 U.S.C. § 2621(d)(11).

2. Can this case be consolidated with any, some or all of the following cases -- EO-2006-0494, EO-2006-0495, EO-2006-0496 and EO-2006-0497 -- because the issues addressed in one or more of these cases are similar, and why or why not?

The Commission might be able to consolidate this docket with Case No. EO-2006-0497 -- 111(d)(15), Interconnection Standard, because § 386.887, RSMo addresses both interconnection and net metering.

3. What type of proceeding (e.g., rulemaking, rate case implementation, etc.) should the Commission use to address the issues in this case in order to meet the Public Utility Regulatory Policies Act of 1978 ("PURPA") Section 111(a) and 111(b) "consideration and determination" requirements [16 U.S.C. 2621(a), 2621(b)], and why?

While the Department believes Missouri's net metering standard found in § 386.887, RSMo, does not constitute a comparable standard to the EPAct net metering standard, we also recognize that the Commission is limited to some degree in its consideration and determination of whether to adopt the new standard if it would conflict with Section 386.887, RSMo.

Former Senator Doyle Childers (now Director of the Department of Natural Resources) sponsored the bill that was enacted in 2002 establishing Missouri's net metering and interconnection law. The former Senator developed the current statute as a

compromise measure and initial step in assessing the feasibility of small customer-owned distributed generation as a component of Missouri's electric system.

Consistent with the current Public Utility Regulatory Policies Act of 1978 (PURPA) standard for integrated resource planning that requires plans to be "...updated on a regular basis, [and] ... provide the opportunity for public participation and comment..."², Director Childers believes that it is good practice to review and update issues on a regular basis and that this may be the appropriate time to re-examine the net metering and interconnection statute after several years of operation.

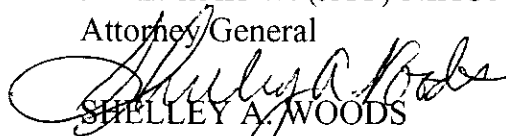
As such, we recommend that the Commission continue this proceeding for the purpose of identifying and documenting any potential revisions to Missouri's § 386.877, RSMo and the Commission's rule, 4 CSR 240-20.065, that will be necessary for Missouri to adopt the EAct net metering standard. We also recommend that the Commission solicit public comments from others not parties to this case and include such comments in the docket.

WHEREFORE, the Missouri Department of Natural Resources submits this response to the list of questions posed by the Commission in its August 17, 2006, Order.

² As codified in 16 U.S.C. 2621(d)(7): "Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented."

Respectfully submitted,

JEREMIAH W. (JAY) NIXON,
Attorney General

A handwritten signature in cursive script, appearing to read "Shelley A. Woods", is written over the printed name.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by mailing a copy thereof, via U.S. Mail, this 15th day of September, 2006, to:

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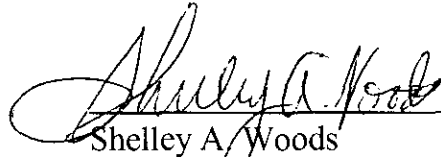
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