

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

<b>In the Matter of the Consideration of</b>	)	
<b>Adoption of the PURPA Section 111(d)(12)</b>	)	<b>Case No. EO-2006-0494</b>
<b>Fuel Sources Standard as Required by</b>	)	
<b>Section 1251 of the Energy Policy Act of 2005</b>	)	

**Department of Natural Resources' Expert Witness John Noller's  
Position Statement on Applicability of Prior State Action Exemption**

**Premise**

I do not believe the prior state action exemption is applicable in this case for the following reasons. Section 1251 of the Energy Policy Act (EPAAct) explicitly requires that the "diverse range of fuels and technologies" included in the utility's fuel sources plan "must include renewable technologies." (Emphasis supplied.) The Missouri Public Service Commission's Electric Utility Resource Planning Rule, 4 CSR 240-22.010-080, requires the utility to consider renewable technologies in its planning analysis, but does not require the utility's preferred resource plan to include renewable technologies. In fact, because Missouri's rule identifies lowest cost as the primary selection criterion in choosing future resources, the use of different fuels and technologies that may be higher in cost (but that could contribute to diversity and reduced dependence on one fuel) are unlikely to be included in a utility's preferred resource plan. Based on this significant difference, the Public Service Commission should conclude that 4 CSR 240-22.010-22.080 is not comparable to § 1251 of EPAAct, and therefore, does not constitute a prior state action, under the terms of EPAAct.

## **Discussion**

The EPC Act Fuel Sources Standard states, "Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies." 16 U.S.C. 2621(d)(12)

Missouri's resource planning rule, 4CSR 240-22.040(1), addresses analysis of a "variety of potential supply-side resource options"; however, the rule does not include fuel and technology diversity as an objective of the resource planning process.

In 4 CSR 240-22.010, the rule's "fundamental objective" is identified as providing "the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest. One of the ways the utility is to meet this objective is to "use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan." (4 CSR 240-22.010(2)(B))

Because lowest cost is identified as the primary selection criterion in choosing future resources, the use of different fuels and technologies that may be higher in cost (but that could contribute to diversity and reduced dependence on one fuel) would likely not be included in a utility's preferred resource plan.

Section 1251 of EPC Act explicitly requires that the "diverse range of fuels and technologies" included in the utility's fuel sources plan "must include renewable technologies." Missouri's resource planning rule requires the utility to consider renewable technologies in its planning analysis, but does not require the utility's preferred resource plan to include renewable technologies. Under the lowest cost criterion, it is

possible and likely that renewable technologies will be excluded from the preferred resource plan. For example, two Missouri utilities have filed resource plans since the rule came out of suspension in December 2005.<sup>1</sup> In neither of these filings does the preferred resource plan include renewable technologies.

At present, Missouri electric utilities subject to Missouri's resource planning rule rely heavily on a few fuel sources for electric generation. The following table summarizes electric generation at *in-state* power plants operated by Missouri investor-owned utilities in 2005. About 99 percent of this generation came from just three fuel sources: coal, nuclear and natural gas. The only renewable resource reported to the U.S. Department of Energy for Missouri in 2005 was hydroelectric generation. (Two of Missouri's electric utilities subject to the resource planning rule have or will soon have electric generation from out-of-state wind farms.)

Fuel type	MWh generated	Percent share
Coal	56,487,552	82.8%
Nuclear	8,030,577	11.8%
Natural Gas	2,914,809	4.3%
Hydro	540,013	0.8%
Diesel	74,944	0.1%
Tire derived fuel	66,263	0.1%
Petroleum Coke	66,113	0.1%
Fossil-derived gases	2,383	0.0%
Total	68,182,654	100.0%

Data Source: U.S. Department of Energy, Energy Information Administration, EIA-906 database, 2005 data.

In summary, because Missouri's resource planning rule does not require renewable energy technologies to be included in an electric utility's preferred resource plan, the

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<sup>1</sup> Kansas City Power & Light filed a resource plan on July 5, 2006; however, KCPL concurrently requested an extension of time for a significant portion of its filing. Therefore, KCPL was not included in this stat

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