BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

NOTICE OF STAFF SUBMISSION AND STAFF FILING OF CERTAIN PRIOR COMMISSION ORDERS RELATING TO PURPA AND 1992 ENERGY POLICY ACT

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and files copies of certain prior Commission Orders addressing some of the provisions of the Public Utility Regulatory Policies Act (PURPA) added to PURPA by the Energy Policy Act of 1992. The Staff is filing in the instant case the following copies of the Commission's October 12, 1993 Report And Order in Case No. EO-93-218 and the Commission's March 4, 1994 Order Approving Stipulation And Agreement in Case No. GO-94-171. The Staff is also providing notice that it has submitted individual copies of these Commission Orders to Regulatory Law Judge Harold Stearley for the Commissioners, their personal advisors and himself. Administrative notice was taken of these Commission Orders at the hearing on April 27, 2007. Both of these Orders appear in the Commission's bound volumes of Mo.P.S.C.3d series, except for the Stipulations and Agreements, which are attached to the following copies of these documents. A copy of the Commission's April 9, 1993 Order Approving Stipulation And Agreement in Case No. EO-93-222 relating to certain other provisions of PURPA added by the Energy Policy Act of 1992 was marked as Exhibit No. 1.

WHEREFORE, the Staff provides notice and submits copies of Commission Orders as indicated above.

Respectfully submitted,

/s/ Steven Dottheim
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed by first-class mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 3rd day of May 2007.

/s/ Steven Dottheim
Steven Dottheim

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the investigation of the § 712 standards of the Energy Policy Act of 1992.	)))	Case No. EO-93-218

APPEARANCES

Joseph H. Raybuck, Attorney, Union Electric Company, Post Office Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Mark G. English, Deputy General Counsel, and William G. Riggins, Staff Attorney, Kansas City Power & Light Company, 1201 Walnut, Post Office Box 418679, Kansas City, Missouri 64106, for Kansas City Power & Light Company.

Sondra B. Morgan, Brydon, Swearengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for Missouri Public Service, a division of UtiliCorp United Inc., St. Joseph Light & Power Company, and The Empire District Electric Company.

Richard W. French, Assistant General Counsel, Laclede Gas Company, 720 Olive Street, Room 1517, St. Louis, Missouri 63101, for Laclede Gas Company.

Michael C. Pendergast, Assistant General Attorney, Regulation, Western Resources, Inc., 818 Kansas Avenue, Topeka, Kansas 66612, for Western Resources, Inc., doing business as Gas Service, a Western Resources Company.

C. Edward Peterson, Finnegan & Peterson, 1209 Penntower Building, 3100 Broadway, Kansas City, Missouri 64111, for the City of Kansas City, Missouri.

Diana M. Schmidt, Robert C. Johnson, and Arthur L. Smith, Peper, Martin, Jensen, Maichel and Hetlage, 720 Olive Street, 24th Floor, St. Louis, Missouri 63101, for: Ag Processing Inc., Anheuser-Busch Companies, Inc., Archer-Daniels Midland, Barnes Hospital, Boehringer Ingelheim Animal Health, Chrysler Motors Corporation, Continental Cement Corporation, Emerson Electric Company, General Motors Corporation, Holnam, Inc., LaFarge Corporation, MEMC Electronic Materials, Inc., Mallinckrodt Specialty Chemicals Company, McDonnell Douglas Corporation, Monsanto Company, Pea Ridge Iron Ore Company, River Cement Company, and The Doe Run Company.

Willard C. Reine, Attorney at Law, 314 East High Street, Jefferson City, Missouri 65101,

and

Samuel E. Overfelt, Attorney at Law, Post Office Box 1336, Jefferson City, Missouri 65101, for Missouri Retailers Association.

Barry N.P. Huddleston, Attorney at Law, 2500 Citywest Boulevard, Suite 150, Post Office Box 4411, Houston, Texas 77210-4411, for Destec Energy, Inc.

Darnell Pettengill, Attorney at Law, 102 East High Street, Suite 205, Jefferson City, Missouri 65101, for Cogentrix, Inc.

Paul S. DeFord and **Stuart W. Conrad**, Lathrop & Norquist, 2345 Grand Avenue, Suite 2500, Kansas City, Missouri 64108, for Armco Inc. and Midwest Gas Users Association.

Lewis R. Mills, Jr., First Assistant Public Counsel, Office of Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel and the public.

Steven Dottheim, Deputy General Counsel, and **Thomas H. Luckenbill**, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ALSO PRESENT

Larry Cowder, Assistant Attorney General, State of Kansas, 1500 Arrowhead, Topeka, Kansas 66612, for the Kansas Corporation Commission.

HEARING EXAMINER: **Edward C. Graham.**

REPORT AND ORDER

On January 7, 1993, the Commission's Staff (Staff) filed a Motion To Establish A Docket And Schedule A Prehearing Conference relating to Section 712 of the federal Energy Policy Act of 1992 (EPACT). Section 712 of EPACT amended Section 111(d) of the Public Utility Regulatory Policies Act of 1979 (PURPA) by adding subsection (10) to Section 111(d) of PURPA. Section 712 of EPACT requires that not later than one year after the enactment date, i.e., by October 23, 1993, the Commission should consider and make a determination whether it is appropriate to implement any of the subparagraphs of subsection (10).

On January 15, 1993, the Commission issued an Order And Notice Establishing A Docket And Setting Prehearing Conference and ordering a notice served on anticipated intervenors and a copy of its press release served on all members of the General Assembly in the state and publishers of each newspaper in the state as listed in the newspaper directory of the current ***Official Manual of the State of Missouri***. An intervention deadline date was set for February 11,

1993. On February 17, 1993 the Commission issued an Order granting intervention to the following parties: Union Electric Company (UE); Kansas City Power & Light Company (KCPL); St. Joseph Light & Power Company (SJLP); The Empire District Electric Company (EDE); Missouri Public Service (MPS); Laclede Gas Company; Western Resources, Inc., d/b/a Gas Service, A Western Resources Company; Williams Natural Gas Company; City of Kansas City, Missouri (Kansas City); Anheuser-Busch Companies, Inc., Ag Processing, Inc., Archer-Daniels Midland, Barnes Hospital, Chrysler Motors Corporation, Continental Cement Corporation, The Doe Run Company, Emerson Electric Company, General Motors Corporation, Holnam, Inc., MEMC Electronic Materials, Inc., Mallinckrodt Specialty Chemicals Company, McDonnell Douglas Corporation, Monsanto Company, Pea Ridge Iron Ore Company, River Cement Company, LaFarge Corporation, and Boehringer Ingelheim Animal Health (Anheuser-Busch, et al.); Missouri Retailers Association; Destec Energy, Inc. (Destec); and Cogentrix, Inc. (Cogentrix). A subsequent Order Granting Intervention was issued by the Commission on March 12, 1993 granting intervention to Midwest Gas Users Association, Armco Inc., and ASARCO, Inc.

On February 19, 1993, as ordered by the Commission, a prehearing conference was convened. On March 3, 1993 the parties submitted to the Commission a memorandum of recommendations resulting from the prehearing conference. On March 10, 1993, the Commission issued an Order As To The Nature Of Proceedings, Scope Of Proceedings, And Schedule Of Proceedings. On March 15, 1993, an issues workshop was held by the parties and from that workshop the parties filed on April 2, 1993 with the Commission a Composite List Of Issues. On May 18, 1993 direct testimony was filed by the following parties: Staff, UE, KCPL, MPS, EDE, SJLP, Anheuser-Busch, et al., Cogentrix, and Destec. A prehearing conference was held on June 1, 1993. Rebuttal testimony was filed on June 8, 1993 by the following parties: Staff, KCPL, MPS, SJLP, Anheuser-Busch, et al., Cogentrix, and Destec. On June 23, 1993 the parties filed a Hearing Memorandum. On

June 28, 1993 a Nonunanimous Stipulation And Agreement was filed with the Commission with only one party being a nonsignatory, Laclede Gas Company. On July 6, 1993 an evidentiary hearing was conducted in the Commission's hearing room located on the fifth floor of the Truman Building in Jefferson City, Missouri, where the Nonunanimous Stipulation And Agreement was submitted to the Commission along with the Hearing Memorandum and direct testimony and rebuttal testimony previously filed. No party requested cross-examination of any witness, and all parties appeared except those excused, being: City of Kansas City, Missouri, Western Resources, Inc., d/b/a Gas Service, Missouri Retailers Association, and ASARCO, Inc.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Section 712 of the federal Energy Policy Act of 1992 (EPACT) requires that not later than one year after enactment, the Missouri Public Service Commission shall consider and make a determination whether it is appropriate to implement standards regarding the issues set out in subparagraph (A). Section 712 of EPACT amends Section 111(d) of the Public Utility Regulatory Policies Act (PURPA) by adding subsection (10) to Section 111(d) of PURPA. Section 712 of EPACT requires the Commission to perform a general evaluation of: (i) the potential for increases or decreases in the costs of capital and the resulting increases and decreases in retail rates that may result for utilities that use purchases of long term wholesale power to meet electric demand in lieu of the construction of new generating facilities; (ii) whether the use of exempt wholesale generators (EWGs) of capital structures that employ proportionally greater amounts of debt than the capital structures of utilities threatens

reliability or provides an unfair advantage for EWGs over such utilities; (iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long term wholesale power supply; and (iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

The Nonunanimous Stipulation And Agreement submitted by all the parties to this docket other than Laclede Gas Company, which had no specific objections, represents a negotiated settlement for the sole purpose of addressing the requirements of Section 111(d)(10)(A) of PURPA and Section 712 of EPACT. The parties state that the Nonunanimous Stipulation And Agreement (Stipulation), attached hereto as Attachment A and incorporated herein by reference, resulted from extensive negotiations among the signatory parties and that the provisions thereof are interdependent.

As to the first two subsections, Section 111(d)(10)(A)(i) and Section 111(d)(10)(A)(ii) of PURPA, the parties have agreed that it is inappropriate and unnecessary to adopt generic standards or procedures regarding these issues. The Stipulation states that these issues should be determined, due to the variability of specific situations, on a case-by-case basis. The parties conclude that review of these issues can occur in the context of a particular rate case, a particular triennial filing required by the electric utility resource planning rules, or some other particular, company-specific proceeding.

Regarding Section 111(d)(10)(A)(iii) of PURPA, the Stipulation states that it is unnecessary for the Commission to adopt generic standards or procedures regarding this issue. Instead, it is contended that the Commission should determine that, under existing Commission practice and procedure, proper entities may request approval or disapproval of particular long term wholesale purchase power agreements. It is contended that the Commission can consider jurisdiction at the time of any request.

Regarding Section 111(d)(10)(A)(iv) of PURPA, the Stipulation states that it is unnecessary for the Commission to adopt generic standards or procedures regarding this issue. Also, the Stipulation states that it is unnecessary for the Commission to adopt generic standards or procedures regarding whether to require, as a condition for the approval of the purchase of power, that there be reasonable assurances of fuel supply adequacy. The parties contend that, under existing Commission practice and procedure, proper entities may request approval or disapproval of particular long term wholesale purchase power agreements. The parties contend that at the time a request is submitted, the Commission will have the opportunity to determine, among other things, whether it has jurisdiction to, or whether it should: (1) consider any such request, and (2) in the event that it does consider such a request, decide whether it is appropriate, as a condition for the approval of such long term wholesale purchase power agreement, to require reasonable assurances of fuel supply adequacy.

Certain parties filed testimony regarding their position on these issues. These positions are summarized as follows.

A. Item (i) of Section 111(d)(10)(A) of PURPA

The Staff believes that the potential exists for increases or decreases in the cost of capital for utilities engaging in long term wholesale power purchases as a means of meeting electric demand in lieu of the construction of new generating facilities and, as a result, there exists potential for increases or decreases in the retail rates of the customers of such utilities. The Staff contends, however, that on a nongeneric basis, i.e., on an individual, case-by-case basis for electric utilities within the Commission's jurisdiction, these evaluations should be conducted in the context of (1) the individual filings required every three years by the Commission's electric utility resource planning

rules, i.e., the filings required by the Commission's integrated resource planning (IRP) rules (4 CSR 240-22.010 to 22.080), and (2) particular rate cases.

UE likewise believes there is the potential for increases or decreases in the costs of capital for utilities which purchase wholesale power on a long term basis, but that the Commission should address this matter on a case-by-case basis.

MPS also believes that the Commission should not attempt to prescribe specific evaluation criteria and states that the comparison of the overall cost of a long term purchase agreement to the cost of constructing and owning a plant should be made by including any incremental impact of other changes that would be required to be made to the utility's capital structure in order to retain sound ratings and availability of capital at a reasonable cost.

EDE also believes that the Commission should not attempt to prescribe specific evaluation criteria and states that it is concerned with the tendency to treat long term wholesale purchase agreements as debt equivalents, as it has found from personal experience that such treatment can result in a lowering of the company's bond rating.

Anheuser-Busch, et al., state that the Commission should decline to adopt standards on this issue because such standards are likely to disadvantage ratepayers and are better viewed in a case-specific procedure. They state that adoption of standards could have at least three undesirable effects for ratepayers: (1) restrict the flexibility of utilities in making purchases of wholesale power from alternate suppliers causing them to forgo attractive opportunities; (2) guarantee the utilities cost recovery if they comply with standards and thereby shift risk to ratepayers; or (3) restrict the Commission's future discretion to regulate wholesale power purchases by utilities.

Cogentrix believes that the Commission should not adopt specific standards on this issue and states that its experience shows that its cost of

capital through the use of a higher percentage of debt than that customary in regulated utility companies has benefited customers. It further states that contrary to the past treatment of purchase power agreements (PPAs) as debt equivalent by some credit rating agencies, PPAs are not the equivalent of debt since almost all PPAs are performance-based contracts. It believes that utilities, in fact, gain financial flexibility during the development and construction phases of a project by transferring various risk factors through PPAs. It believes that even if a utility's credit rating is downgraded by the financial market due to PPAs, one should not assume that there would not have been a downgrade at least as severe in the credit rating had the utility built as opposed to purchased power.

Destec does not believe that standards are necessary on this issue. It states that individual contracts vary from contract to contract and there are many differences among them; therefore, no general standards can be set that would fit all circumstances. It emphasizes the need to compare the relative risk of available supply and demand side options, and not debate the risk of specific options in isolation, recognizing that there are risks and benefits associated with all options. It believes the purchased power option in general will maximize the benefits and minimize overall risks.

KCPL, even though it is a signatory party to the Stipulation, recommends the Commission issue a "general policy statement" acknowledging that the Commission will consider compensating utilities for increased costs when appropriate, but it also believes that a case-by-case approach is preferable to detailed rules governing these matters. It believes the most likely scenario is that PPAs, if significant, will increase the cost of capital and thus possibly increase retail electric rates, and that the increase may or may not be as significant as that which could result from the utility's construction of new capacity.

B. Item (ii) of Section 111(d)(10)(A) of PURPA

The Staff does not believe that exempt wholesale generators' (EWGs) use of capital structures which employ proportionally greater amounts of debt than the capital structures of the electric utilities for which the Commission has ratemaking authority threatens financial or operational reliability, or provides an unfair advantage for EWGs over such utilities. The Staff contends that the Commission should rely on the market, i.e., equity investors, debt lenders, and the utility to determine the levels of risk and the appropriate pricing associated with EWG projects, based on the assumption that investors, lenders, and the utility will thoroughly investigate the EWG developer and require appropriate assurances of performance. The Staff believes that each purchase power agreement and related loan agreements should be reviewed by the Commission in the context of IRP rule filings and particular rate cases.

UE believes that an EWG which has a capital structure that employs proportionally greater amounts of debt than the capital structures of utilities may threaten reliability and provide an unfair advantage by EWGs over utilities, but the Commission should address this matter on a case-by-case basis.

MPS believes that reliability may or may not be affected by the use of high debt financing. It believes that many other noncapital factors that have nothing to do with capital structure affect reliability. MPS also does not believe standards should be adopted on this issue by the Commission.

EDE also says, in arguing against standards, that a capital structure is only one determinant in the pricing of power, and when it considers purchasing power from an alternative source, pricing will be only one of a number of qualitative factors to be considered.

Anheuser-Busch, et al., believe that the Commission should decline to adopt any standards. They believe that issues relating to fuel purchase agreements and capital structure are case-specific and that rigid standards may,

in the future, prove to be detrimental. They state that adoption of standards could have at least three undesirable effects for ratepayers: (1) restrict the flexibility of utilities in making purchases of wholesale power from alternate suppliers, causing them to forgo attractive opportunities; (2) guarantee the utilities cost recovery if they comply with standards and thereby shift risk to ratepayers; or (3) restrict the Commission's future discretion to regulate wholesale power purchases by utilities.

Cogentrix believes that the Commission should not implement a specific standard. Cogentrix states that its experience shows that the composition of a capital structure need not adversely affect reliability or provide an unfair advantage. It believes that reliability is simply not a function of debt leverage but rather a function of many other variables. It states that an additional review of reliability is not needed given the significant review already imposed by financial institutions who fund project development.

Destec, in arguing against standards, states that Standard & Poor's, the leading bond-rating agency, evaluates each contract for its unique impact on the purchasing utility. It states that individual contracts typically vary from contract to contract and there are many differences among them; therefore, no general standards can be set that would fit all circumstances. Destec emphasizes the need to compare the relative risk of available supply and demand side options and not debate the risk of specific options in isolation.

KCPL believes that as long as the purchasing utility is free to consider appropriately all of the financial and operational effects of proposed EWG power purchase contracts in making its decision whether to enter into such contracts, the use by EWGs of capital structures which employ proportionally greater amounts of debt than the capital structures of utilities does not necessarily threaten reliability or provide an unfair advantage for EWGs over utilities. KCPL believes that each contract should be judged by the Commission

on a case-by-case basis. However, it additionally urges the Commission to issue a "general policy statement" acknowledging that utilities may consider all of the financial and operational effects of purchased power agreements in deciding whether to enter into such agreements.

C. Item (iii) of Section 111(d)(10)(A) of PURPA

The Staff does not believe that the Commission should implement procedures for the advance approval or disapproval of particular long term wholesale purchase power agreements. The Staff's opposition to advance approval or disapproval includes long term wholesale purchase power agreements between: (1) EWGs and electric utilities regulated by the Commission, and (2) electric utilities regulated by the Commission and other electric utilities. The Staff believes that the Commission should continue with its present practice, which does not prohibit any electric utility from seeking advance approval or disapproval of a particular long term wholesale purchase power agreement. The Staff asserts that advance approval or disapproval is not consistent with the Commission's IRP rule, would be unworkable as a practical matter, and would be unwise as a policy choice.

UE believes that the Commission should not implement procedures for the advance approval or disapproval of the purchase of a particular long term wholesale power contract. UE prefers that wholesale power purchases be reviewed at the time of a rate case. It believes that advance approval may compromise the utility's flexibility and independence in management making, but that the option of advance approval from the Commission should remain open if circumstances require it.

MPS advocates the nonmandatory procedural option of advance approval from the Commission of long term wholesale power contracts. MPS believes that advance approval of a long term wholesale power purchase contract as well as

construction of utility-owned generation can lower the cost of either arrangement.

EDE believes in the optional advance approval approach and advocates the establishment of procedural guidelines for the utility to follow when making that request. These guidelines would cover such things as filing requirements, time limitations, and the information required by the Commission in order to consider a request for approval.

Anheuser-Busch, et al., believe that preapproval potentially shifts risk of wholesale power purchases from the EWG and the utility to ratepayers by improperly placing ratepayers in the position of guaranteeing the supply contracts of utilities. They believe that if utilities are granted preapproval of wholesale power purchase decisions or contracts, their incentive to bargain for wholesale power from a variety of sources in the competitive market and to take prudent risks in purchasing wholesale power will be reduced.

Cogentrix believes the Commission should not implement a procedure for the advance approval or disapproval of the purchase of a particular long term wholesale power supply. If there are any preapprovals, it believes that such advance approval should include preapproval for utility pass-throughs to ratepayers on payments made under those PPAs. Furthermore, it believes that preapproval procedures must be designed to minimize any delay in profit development time and therefore should be filed within a short period of time after the PPA is executed. Also, it believes that any preapproval procedures should be final so that approvals will not be revisited, or pass-through disallowed, at least through the financing period for a project but preferably for the entire life of the project.

Destec advocates advance approval practices. It believes that preapproval of wholesale power contracts will provide the necessary certainty to proceed with cost-effective projects. It believes that EWG contracts would be

best dealt with by the Commission contemporaneously with the signing of the contract rather than a later rate case when it is more difficult to evaluate avoided costs after the conditions resulting in such avoided costs have disappeared. Destec believes that this is especially true if the EWG is also a qualifying faculty (QF) since PURPA gives a QF the right to choose to receive the avoided cost of the utility receiving power at the time of a legally enforceable obligation or at the time of delivery.

Kansas City believes that without a known regulatory treatment, there is reason to believe that it is unlikely that such projects would be completed due to the risk of regulatory disapproval.

KCPL's position is that the Commission approval of an EWG contract, in advance of the EWG obtaining financing for the power project, will reduce the EWG's financing costs which, in turn, will reduce the costs of the purchasing utility and its customers. While not arguing for Commission standards, KCPL recommends that the Commission explicitly acknowledge that a utility may apply for such preapproval.

D. Item (iv) of Section III(d)(10)(A) of PURPA

Staff states that a condition precedent to the question whether reasonable assurances of final supply adequacy should be required for advance approval of a long term wholesale purchase power agreement, is that there be advance approval or disapproval of such purchase power agreements. The Staff is opposed to advance approval or disapproval of such agreements.

UE states that sound management practice would require a utility to include in any purchased power contract reasonable assurances of fuel supply adequacy.

MPS states that a utility can address this issue by specifying minimum fuel inventory levels within its request for proposal from EWGs.

MPS states that a utility can address this issue by specifying minimum fuel inventory levels within its request for proposal from EWGs.

EDE believes the Commission should trust the judgment of the utility regarding this issue.

SJLP has not taken a position but points out that long term purchased capacity should be defined within the context of this section as that purchased capacity which is used as a permanent replacement for owned generation.

Anheuser-Busch, et al., believe that although fuel supply adequacy is a proper matter for consideration, this consideration should only be made on a case-by-case basis. They state that it is impossible to address in advance of utility power purchase decisions the trade-offs necessarily involved in those decisions.

Cogentrix believes that the regulatory review of adequacy of fuel supply is not necessary for project-financed wholesale generators, as suppliers of capital, including developers, construction lenders, equity participants and suppliers of long term debt, already scrutinize such arrangements carefully and rigorously before agreeing to finance the project. It states that fuel experts are hired to assist in formulating and evaluating fuel plans. Many utilities make adequacy of fuel supply an important criterion in the evaluation of wholesale generation project proposals, and the utilities monitor this aspect of the selected project on an ongoing basis. It believes that if regulatory examination of system-wide fuel mix risks is to occur, it is best performed in the IRP process or in the formulation of requests for proposals rather than in the final contract review stage.

Destec recommends that the Commission not require long term fuel commitments for either utilities or independent power generators.

KCPL believes that this issue should be addressed on a case-by-case basis at the time advance approval of a particular contract is sought.

The Commission has reviewed the Nonunanimous Stipulation And Agreement, the Hearing Memorandum and the prefiled testimony in this matter in light of the compliance requirements of EPACT, and finds the Stipulation And Agreement to be reasonable. The Commission finds that in adopting the Stipulation And Agreement herein after conducting an evidentiary hearing, it is complying with the requirements of EPACT Section 712 to evaluate, consider and make a determination whether it is appropriate to implement any standards regarding the issues set out in subparagraph (A) thereof. The Commission, in adopting the Stipulation And Agreement, is specifically finding that it is inappropriate and unnecessary to adopt generic standards or procedures regarding any of the four issues set out in subparagraph (A) of Section 712 of EPACT. Instead, the Commission finds that, due to the variability of specific situations, the four issues set out in subparagraph (A) of Section 712 of EPACT are more appropriately reviewed on a case-by-case basis, and furthermore, procedures and opportunities already exist for such review. Also, the Commission finds that any questions concerning whether it has jurisdiction regarding any of the issues set out in subparagraph (A) of Section 712 of EPACT should likewise be determined on a case-by-case basis. The Commission has summarized a great deal of the testimony filed in this case to support its findings herein and its specific finding to adopt the Stipulation And Agreement. The Commission determines that the testimony generally supports its findings herein. The Commission, however, specifically rejects KCPL's request that the Commission issue a "general policy statement" regarding the four issues set out in subparagraph (A) of Section 712 of EPACT. In considering the possibility of Section 712 standards, the Commission has considered the National Regulatory Research Institute's ***"White Paper on the Energy Policy Act of 1992: An Overview for State Commissions of New PURPA Statutory Standards"*** issued in April, 1993. While not adopting all of the positions of that paper, the Commission notes that the Summary supports its own position in this case:

> In summary, a state commission would be hard pressed to find that the EPACT section 712 standards carry out the purposes of Title I.... The section 712 standards have little to do with the purposes of PURPA Title I.... The heavy-handed regulatory approach suggested by the standards of EPACT section 712 does not serve the purposes of Title I and ignores the need for regulators to change and adapt to the industry restructuring that is likely to result from EPACT.

The Commission determines that setting heavy-handed regulatory generic standards concerning the four issues set out in subparagraph (A) of Section 712 of EPACT would prematurely and inappropriately constrict the discretion it needs to deal with these issues because of the probability that their application to each regulated utility will be situation-specific and should more appropriately be addressed on a case-by-case basis through heretofore established Commission practices and procedures. The Commission, therefore, approves and adopts the Nonunanimous Stipulation And Agreement filed herein as complying with the requirements of Section 712 of EPACT and incorporates it herein in full by reference.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Section 712 of the federal Energy Policy Act of 1992 (EPACT) reads as follows:

> **SEC. 712. STATE CONSIDERATION OF THE EFFECTS OF POWER PURCHASES ON UTILITY COST OF CAPITAL; CONSIDERATION OF THE EFFECTS OF LEVERAGED CAPITAL STRUCTURES ON THE RELIABILITY OF WHOLESALE POWER SELLERS; AND CONSIDERATION OF ADEQUATE FUEL SUPPLIES.**
>
> Section 111 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 and following) is amended by inserting the following new paragraph after paragraph (9):
>
> "(10) CONSIDERATION OF THE EFFECTS OF WHOLESALE POWER PURCHASES ON UTILITY COST OF CAPITAL; EFFECTS OF LEVERAGED CAPITAL STRUCTURES ON THE RELIABILITY OF

WHOLESALE POWER SELLERS, AND ASSURANCE OF ADEQUATE FUEL SUPPLIES.--(A) To the extent that a State regulatory authority requires or allows electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting electric demand, such authority shall perform a general evaluation of:

"(i) the potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

"(ii) whether the use by exempt wholesale generators (as defined in section 32 of the Public Utility Holding Company Act of 1935) of capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities;

"(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

"(iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

"(B) For purposes of implementing the provisions of this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(C) Notwithstanding any other provision of Federal law, nothing in this paragraph shall prevent a State regulatory authority from taking such action, including action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest as a result of performing evaluations under the standards of subparagraph (A).

"(D) Notwithstanding section 124 and paragraphs (1) and (2) of section 112(a), each State regulatory authority shall consider and make a determination concerning the standards of subparagraph (A) in accordance with the requirements of subsections (a) and (b) of this section, without regard to any proceedings commenced prior to the enactment of this paragraph.

> "(E) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than one year after the date of enactment of this paragraph."

Specifically, Section 712 of EPACT requires the Commission to generally evaluate, consider and make a determination concerning standards pertaining to the four issues set out in subparagraph (A) thereto.

Pursuant to Section 536.060, R.S.Mo. 1986, the Commission may approve a stipulation and agreement concluded between the parties to any issues in a contested case. However, because Laclede Gas Company is not a signatory to the Stipulation And Agreement in this case, it is nonunanimous. The Commission, therefore, may not summarily adopt it as just and reasonable. Section 386.420, R.S.Mo. (Cum. Supp. 1992), as interpreted by ***State ex rel. Fischer v. Public Service Commission***, 645 S.W.2d 39, (Mo. App. 1982), requires that the Commission issue a report and order setting out its findings concerning any disputed issues.

The Commission has determined that the Stipulation And Agreement filed herein and attached hereto as Attachment A is just and reasonable and, along with the Commission's findings of fact herein, complies with the Commission's statutory requirements dictated by Section 712 of EPACT.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission hereby approves and adopts the Nonunanimous Stipulation And Agreement attached hereto as Attachment A and incorporated herein by reference as complying with the statutory requirements as dictated by the provisions of Section 712 of the federal Energy Policy Act of 1992.

2. That this Report And Order shall become effective on the 22nd day of October, 1993.

BY THE COMMISSION

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins, Kincheloe and Crumpton, CC., concur and certify compliance with the provisions of Section 536.080, R.S.Mo. 1986.

Dated at Jefferson City, Missouri, on this 12th day of October, 1993.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Investigation of Section 712 Standards of the Energy Policy Act of 1992.	))))	Case No. EO-93-218

NONUNANIMOUS STIPULATION AND AGREEMENT

This case was initiated by a filing by the Missouri Public Service Commission Staff (Staff) on January 7, 1993 of a Motion To Establish A Docket And Schedule A Prehearing Conference relating to Section 712 of the Energy Policy Act of 1992 (EPACT). A detailed procedural history of this docket is set out in the Hearing Memorandum that has been filed with the Commission. Said procedural history will not be repeated in the instant document. As a result of the discussions of the parties to this case, a settlement of the issues required to be addressed by the Commission by Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), as amended by Section 712 of EPACT, has been reached by the parties, and it is hereby being submitted to the Commission for the Commission's consideration. One party to Case No. EO-93-218, Laclede Gas Company, is not a signatory to this Nonunanimous Stipulation And Agreement, has taken no position on the issues presented, and does not object to the Commission adopting this Nonunanimous Stipulation And Agreement.

Due to the nature of this docket, a Hearing Memorandum has been submitted to the Commission for the purpose of summarizing the various positions of the parties as reflected in prefiled

testimony, in most instances. The Hearing Memorandum reflects that the parties were not precluded from stating a position in the Hearing Memorandum even if they had not filed testimony.

The following stipulations are hereby submitted to the Commission for its consideration and approval in complete resolution of Case No. EO-93-218. The undersigned parties hereby stipulate and agree as follows:

1. Regarding Section 111(d)(10)(A)(i) of PURPA, pursuant to Section 712 of EPACT, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is inappropriate and unnecessary to adopt generic standards or procedures regarding this issue in this proceeding. Instead, the Commission should determine that, due to the variability of specific situations, this issue properly is reviewed on a case-by-case basis, and should find that opportunities already exist for such review. A proper entity may contend, and a proper entity may challenge, that such review should occur in the context of a particular individual rate case, a particular triennial filing required by the electric utility resource planning rules, or some other particular, company specific proceeding.

2. Regarding Section 111(d)(10)(A)(ii) of PURPA, pursuant to Section 712 of EPACT, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is inappropriate and unnecessary to adopt generic standards or

procedures regarding this issue in this proceeding. Instead, the Commission should find that, for the present, the market should determine the levels of risk and appropriate pricing associated with EWG projects, and opportunities already exist for the Commission to review, on a case-by-case basis, the financial and operational effects of EWG contracts on purchasing utilities. A proper entity may contend, and a proper entity may challenge, that such review should occur in the context of a particular individual rate case, a particular triennial filing required by the electric utility resource planning rules, or some other particular, company specific proceeding.

3. Regarding Section 111(d)(10)(A)(iii) of PURPA, pursuant to Section 712 of EPACT, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is unnecessary to adopt generic standards or procedures regarding this issue in this proceeding. Instead, the Commission should determine that, under existing Commission practice and procedure, proper entities may request approval or disapproval of particular long-term wholesale purchase power agreements. At the time a request is submitted to the Commission for advance approval or disapproval of a particular long-term wholesale purchase power agreement, the Commission will have the opportunity to determine, among other things, whether it has jurisdiction to, or whether it should, consider any such request. The parties hereto do not address the

question of whether the Commission has jurisdiction to or should consider any such request.

4. Regarding Section 111(d)(10)(A)(iv) of PURPA, pursuant to Section 712 of EPACT, because the parties have stipulated and recommended that the Commission not adopt generic standards or procedures regarding advance approval of long-term wholesale power agreements, the parties stipulate and recommend that the Commission make the determination that, based upon a general evaluation of the evidence presented by the parties, it is unnecessary to adopt generic standards or procedures regarding whether to require, as a condition for the approval of the purchase of power, that there be reasonable assurances of fuel supply adequacy. Instead, the Commission should determine that, under existing Commission practice and procedure, proper entities may request approval or disapproval of particular long-term wholesale purchase power agreements. At the time a request is submitted to the Commission for advance approval or disapproval of a particular long-term wholesale purchase power agreement, the Commission will have the opportunity to determine, among other things, whether it has jurisdiction to, or whether it should, (1) consider any such request; and (2) in the event that it does consider such a request, decide whether it is appropriate, as a condition for the approval of such long-term wholesale purchase power agreement, to require reasonable assurances of fuel supply adequacy. The parties hereto do not address the question of whether the Commission has jurisdiction to or should consider any such request.

5. The Staff shall have the right to submit to the Commission, in memorandum form, an explanation of its rationale for entering into this Nonunanimous Stipulation And Agreement and to provide to the Commission whatever further explanation the Commission requests. Such memorandum 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 Nonunanimous Stipulation And Agreement. It is understood by the signatories hereto that any rationales advanced by the Staff in such a memorandum are the Staff's own and are not acquiesced in or otherwise adopted by any other party hereto.

6. None of the parties to this Nonunanimous Stipulation And Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, 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 Nonunanimous Stipulation And Agreement, or for which provision is made in this Nonunanimous Stipulation And Agreement.

7. This Nonunanimous Stipulation And Agreement represents a negotiated settlement for the sole purpose of addressing the requirements of Section 111(d)(10)(A) of PURPA and Section 712 of EPACT. Except as specified herein, the parties to this Nonunanimous Stipulation And Agreement shall not be prejudiced,

bound by, or in any way affected by the terms of this Nonunanimous 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 the instant Nonunanimous Stipulation And Agreement in the instant proceeding, or in any way condition its approval of same.

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

9. The prepared testimonies and schedules of the following witnesses shall be received into evidence without the necessity of these witnesses taking the witness stand:

Staff

Jay W. Moore (Direct and Rebuttal)
Martin Turner (Direct and Rebuttal)
Claus J. Renken (Direct and Rebuttal)
Mark L. Oligschlaeger (Direct and Rebuttal)

Union Electric Company

K.L. Redhage (Direct)
Daniel F. Cole (Direct)

Kansas City Power & Light Company

Michael W. Ranger (Direct)
John J. DeStefano (Direct)
Steven W. Cattron (Direct and Rebuttal)

Missouri Public Service

Keith G. Stamm (Direct and Rebuttal)

Empire District Electric Company

Myron McKinney (Direct)

St. Joseph Light & Power Company

Stephen L. Ferry (Direct and Rebuttal)
Larry J. Stoll (Rebuttal)

Anheuser-Busch, et al.

Donald E. Johnstone (Direct and Rebuttal)

Cogentrix, Inc.

James E. Franklin (Direct and Rebuttal)

Destec Energy, Inc.

Barry N.P. Huddleston (Direct and Rebuttal)

10. In the event the Commission accepts the specific terms of this Nonunanimous 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 reading 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 Nonunanimous Stipulation And Agreement.

Respectfully submitted,

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Mark G. English
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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 28th day of June, 1993.

Steven Dottheim

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Boehringer Ingelheim Animal Health.
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Continental Cement Corporation.
Emerson Electric Company.
General Motors Corporation.
Holnam, Inc.
LaFarge Corporation.
MEMC Electronic Materials, Inc.
Mallinckrodt Speciality Chemicals Company.
McDonnell Douglas Corporation.
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Barnes Hospital.
Boehringer Ingelheim Animal Health.
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Emerson Electric Company.
General Motors Corporation.
Holnam, Inc.
LaFarge Corporation.
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ALSO PRESENT:

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FOR: Kansas Corporation Commission.

SEC. 712. STATE CONSIDERATION OF THE EFFECTS OF POWER PURCHASES ON UTILITY COST OF CAPITAL; CONSIDERATION OF THE EFFECTS OF LEVERAGED CAPITAL STRUCTURES ON THE RELIABILITY OF WHOLESALE POWER SELLERS; AND CONSIDERATION OF ADEQUATE FUEL SUPPLIES.

Section 111 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 and following) is amended by inserting the following new paragraph after paragraph (9):

"(10) CONSIDERATION OF THE EFFECTS OF WHOLESALE POWER PURCHASES ON UTILITY COST OF CAPITAL; EFFECTS OF LEVERAGED CAPITAL STRUCTURES ON THE RELIABILITY OF WHOLESALE POWER SELLERS, AND ASSURANCE OF ADEQUATE FUEL SUPPLIES.—(A) To the extent that a State regulatory authority requires or allows electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting electric demand, such authority shall perform a general evaluation of:

"(i) the potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

"(ii) whether the use by exempt wholesale generators (as defined in section 32 of the Public Utility Holding Company Act of 1935) of capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities;

"(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

"(iv) whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

"(B) For purposes of implementing the provisions of this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(C) Notwithstanding any other provision of Federal law, nothing in this paragraph shall prevent a State regulatory authority from taking such action, including action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest as a result of performing evaluations under the standards of subparagraph (A).

"(D) Notwithstanding section 124 and paragraphs (1) and (2) of section 112(a), each State regulatory authority shall consider and make a determination concerning the standards of subparagraph (A) in accordance with the requirements of subsections (a) and (b) of this section, without regard to any proceedings commenced prior to the enactment of this paragraph.

"(E) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than one year after the date of enactment of this paragraph.".

SEC. 713. PUBLIC UTILITY HOLDING COMPANIES TO OWN INTERESTS IN COGENERATION FACILITIES.

Public Law 99-186 (99 Stat. 1180, as amended by Public Law 99-553, 100 Stat. 3087), is amended to read as follows:

"SECTION 1. Notwithstanding section 11(b)(1) of the Public Utility Holding Company Act of 1935, a company registered under said Act, or a subsidiary company of such registered company, may acquire or retain, in any geographic area, an interest in any qualifying cogeneration facilities and qualifying small power production facilities as defined pursuant to the Public Utility Regulatory Policies Act of 1978, and shall qualify for any exemption relating to the Public Utility Holding Company Act of 1935 prescribed pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978.

"SEC. 2. Nothing herein shall be construed to affect the applicability of section 3(17)(C) or section 3(18)(B) of the Federal Power Act or any provision of the Public Utility Holding Company Act of 1935, other than section 11(b)(1), to the acquisition or retention of any such interest by any such company.".

SEC. 714. BOOKS AND RECORDS.

Section 201 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(g) BOOKS AND RECORDS.—(1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of—

"(A) an electric utility company subject to its regulatory authority under State law,

"(B) any exempt wholesale generator selling energy at wholesale to such electric utility, and

"(C) any electric utility company, or holding company thereof, which is an associate company or affiliate of an exempt wholesale generator which sells electric energy to an electric utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric service.

"(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

"(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

"(4) Nothing in this section shall—

"(A) preempt applicable State law concerning the provision of records and other information; or

"(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

"(5) As used in this subsection the terms 'affiliate', 'associate company', 'electric utility company', 'holding company', 'subsidiary

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 4th day of March, 1994.

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

ORDER APPROVING STIPULATION AND AGREEMENT

On November 30, 1993, the Staff of the Missouri Public Service Commission (Staff), filed a motion with the Commission requesting the Commission establish a docket and schedule an early prehearing conference to consider whether the Commission should adopt standards, in accordance with Sections 115 and 303 of the Federal Energy Policy Act of 1992, establishing an integrated resource plan as a part of the Code of State Regulations for all local gas distribution companies over which the Commission has jurisdiction.

On December 7, 1993, the Commission issued an order creating this docket and setting an early prehearing conference, as requested. As a result of that conference the parties filed a Stipulation and Agreement on February 15, 1994, attached and incorporated herein as Attachment A.

In the Stipulation and Agreement, the parties agree that the Commission is required to consider, before October 24, 1994, whether integrated resource planning and investment in conservation and demand management standards should be considered for local gas distribution companies and, if so, the impact those standards might have on small businesses engaged in demand-side management activities to insure that no regulated utility will have an unfair advantage as a result. The parties agreed that a rulemaking procedure should commence in calendar year 1994. This rulemaking procedure will address integrated resource

planning for natural gas distribution companies, conservation and demand management, and attendant considerations. In addition, the parties agreed that each party may adopt the position that no rules should be adopted, that the rules finally proposed may be adopted, or a combination of the two positions.

Finally, the parties agreed that the Commission has complied, in this docket and in previous dockets EX-92-299 and OX-92-300, with Section 115 of the Energy Policy Act of 1992 and Section 303 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by considering the newly enacted natural gas standards and by determining that it will address the implementation of integrated resource planning rules for natural gas distribution companies through a future rulemaking.

The Commission has reviewed the proposed Stipulation and Agreement and attendant federal requirements and finds the proposed Stipulation and Agreement to be reasonable and in the public interest. The Commission agrees that compliance with the federal requirements of Section 115 of the Energy Policy Act and Section 303 of PURPA have been satisfied by this docket, Dockets EX-92-299 and OX-92-300, and by the consideration later this year of a proposed integrated resource planning rulemaking and related matters. The Commission also agrees that due process requires permitting each party to the anticipated rulemaking to argue its position as set out in the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement, attached hereto and incorporated by reference herein as Attachment #1, is hereby approved.

2. That this order shall become effective on March 15, 1994.

BY THE COMMISSION

David L. Rauch

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur.

Attachment 1

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

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.[1]

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

[1]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,

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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 Bott