

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

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

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

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and respectfully requests that the Commission establish a case, provide notice of this matter, set an intervention deadline and schedule an early prehearing conference, all for the purpose of establishing a record of its consideration and determination whether to adopt the Fuel Sources Standard established by §1251 of the Energy Policy Act of 2005. In support thereof, the Staff states as follows:

1. On August 8, 2005, the Energy Policy Act of 2005 (“EPAAct 2005” or “EPAAct”)¹ was signed into law. Among many other things, EPAAct 2005 amended various parts of the Public Utility Regulatory Policies Act of 1978 (“PURPA”).² PURPA’s general objectives are to encourage: (i) conservation of electric energy, (ii) efficiency in use of facilities and resources by electric utilities, and (iii) equitable rates to consumers of

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

² Appears generally in 16 U.S.C. §§ 2601, et seq. However, various provisions appear elsewhere in the United States Code.

electricity.³ EAct incorporated five new standards in PURPA §111(d), i.e., new PURPA §111(d)(11)-(15).

2. In order to comply with EAct, the Commission is to consider and determine whether to adopt each of the new Section 111(d) standards with respect to each jurisdictional electric utility. The law prescribes various deadlines for the commencement of the Commission's consideration and for its determination as to whether or not it is appropriate to implement each standard to carry out PURPA's general objectives. Not all of the new PURPA §111(d) standards have the same deadlines. In the event the Commission decides to adopt a particular standard, specifics as to the implementation of that standard would then need to be addressed. Therefore, the Staff is recommending that the Commission address the new standards by establishing a separate EO case for each standard. Any or all of these cases could be consolidated at a later time if found appropriate by the Commission, but the Staff believes that separate dockets will provide the Commission the greatest flexibility.

3. The Staff requests that the instant case be created for the purpose of establishing a record of the Commission's consideration and determination related to whether to adopt the Fuel Sources Standard, i.e., new PURPA §111(d)(12), established by §1251 of EAct 2005. The Commission is required to commence consideration of this standard no later than August 8, 2007, and is further required to make a determination no later than August 8, 2008, whether:

³ PURPA §101.

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. (PURPA §111(d)(12).)

The Staff views new PURPA §111(d)(12) Fuel Sources and new PURPA §111(d)(13) Fossil Fuel Generation Efficiency as interrelated, and notes that the deadlines for these two standards are the same.

4. Under PURPA §111(b), the Commission's consideration "shall be made after public notice and hearing" and the Commission's determination shall be in writing, based upon findings and upon the evidence presented at the hearing, and available to the public. PURPA §112(a) states that the Commission may consider and make the determination with respect to the standard "in any proceeding respecting the rates of the electric utility."

5. Under new PURPA §112(d) Prior State Actions, the obligation to consider the standard does not apply and no new consideration process is required if prior to the enactment of EPAAct 2005: (i) the state implemented the standard or a comparable standard for electric utilities under the Commission's jurisdiction, (ii) the Commission conducted a proceeding considering the implementation of the standard or 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.

6. The Staff suggests that the Commission encourage electric utilities and intervenors to provide, as part of the intervention process, written comments and support

regarding the threshold question of whether the Commission should find that Prior State Actions are comparable and meet the objectives of EPA 2005's Fuel Sources Standard.

7. The Staff also proposes that an early prehearing conference be scheduled for the purpose of developing an appropriate procedural schedule which will permit the Commission to meet the various requirements of §1251 of EPCA. The procedural schedule should provide for the submission of testimony regarding the appropriateness of implementing the Fuel Sources Standard and, if relevant, specifics as to implementation. Parties should be directed to submit a proposed procedural schedule to the Commission within one (1) week following the early prehearing conference.

8. The early prehearing conference will allow parties the opportunity to explore whether an agreement can be reached and submitted to the Commission recommending either:

- a. no further action with respect to the Fuel Sources Standard due to the Commission qualifying for no further action under new PURPA §112(d) Prior State Actions; or
- b. further Commission action with respect to the Fuel Sources Standard in the instant case; or
- c. further Commission action with respect to the Fuel Sources Standard in some other case. For example, the Commission could:
 - i. open an EX (rulemaking) case, so that further evidence can be provided and considered for purposes of deciding the extent to which, if at all, implementation of the standard should be, or is required to be, in the form of a rule;⁴ or

⁴ Currently, the Commission's Electric Utility Resource Planning rules (4 CSR 240-22) set minimum standards to govern the scope and objectives of the resource planning process for each investor-owned utility. The Staff believes that new PURPA §112(d) may apply to the Fuel Sources Standard. Since there has been some discussion as to the need to revise these rules, consideration of PURPA's new Fuel Sources and Fossil Fuel

- ii. direct individual electric utilities to include testimony regarding the need for and, if relevant, the extent of applicability of that standard, in either a pending general rate case or in its next general rate case filing.

9. Since the Staff is also filing motions to establish separate EO cases for each of the other new PURPA Sec. 111(d) standards, it would be helpful and efficient for the Commission to schedule simultaneous initial prehearing conferences for all these cases. Doing so would allow parties to discuss how to best coordinate and prioritize the consideration of these standards and develop procedural schedule recommendations.

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

WHEREFORE, the Staff requests that the Commission: (1) create a case for the purpose of establishing a record of its consideration and determination of the matter of adopting the Fuel Sources Standard of §1251 of the Energy Policy Act of 2005 (new PURPA §111(d)(12)); (2) provide notice of this matter; (3) set an intervention deadline; (4) encourage electric utilities and intervenors to provide, as part of their applications or

Generation Efficiency Standards could possibly be addressed in tandem with those revisions if the opportunity arises.

motions for intervention, written comments as to whether the Commission should determine that there is basis for finding that any utility within its jurisdiction qualifies under new PURPA §112(d) Prior State Actions of EPAct 2005; and (5) schedule an early prehearing conference simultaneous with other new PURPA §111(d) early prehearing conferences.

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to those individuals on the attached list this 22nd day of June 2006.

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