

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

In the Matter of a Proposed Rulemaking Regarding)
Revision of the Commission's Chapter 22 Electric) File No. EX-2010-0254
Utility Resource Planning Rules)

**COMMISSIONER CLAYTON'S CONCURRENCE TO
FINAL ORDER OF RULEMAKING**

Issue Date: March 15, 2011

This Commissioner concurs in the Commission's Final Order of Rulemaking with nine updated rules relating to electric utility Integrated Resource Planning (IRP). This update has been long overdue in that the Commission's original IRP rules were approved in 1993. Since that time, the world of electricity delivery and regulation has changed a great deal requiring fresh perspectives, new efforts at integrating alternative resources and contemporary looks at modern technologies. With the exception of several provisions with which I disagree, this package of regulations lays the groundwork for future Commissions and the utilities we regulate in blazing a new path in serving our respective constituents, Missouri rate payers.

Since the Commission's original IRP rules became effective, the electric utility industry has undergone sweeping change – both in Missouri and throughout the nation – which necessitated a comprehensive review and update of the Chapter 22 rules governing electric utility resource planning. To that end, the Commission's Staff organized a stakeholder process and convened a series of workshops in 2009 to receive stakeholder input which ultimately led to the publication of the proposed revised rules in the Missouri Register in 2010.

Having served as Chairman of the Commission during that period, this Commissioner is pleased to see that the lengthy and laborious process was not in vain and, indeed, has resulted in significant revisions to the Commission's Chapter 22 Electric Utility Resource Planning Rules. These revisions bring Missouri's IRP process into the 21st Century. This Commissioner extends great thanks to the Commission Staff, and all participating stakeholders, for their diligence and hard work throughout this process. These rules will help to further the state's policies regarding energy efficiency, including, but not limited to, those reflected in the Missouri Energy Efficiency Investment Act, encourage the use of cost-effective renewable energy pursuant to Proposition C, and appropriately consider both demand-side and supply-side options on an equivalent basis. The rules incorporate new concepts such as increased stakeholder involvement and greater transparency through meetings, annual filings, and contemporary issue identification. They require analysis of transmission and distribution planning as part of the overall resource planning process, and they provide decreased prescriptiveness in methodologies used in load analysis, load forecasting, supply-side analysis, demand-side analysis and risk analysis.

While this Commissioner supports the Final Order of Rulemaking, this Commissioner is concerned with the majority's adoption of a Commission "acknowledgement" procedure in the new rules. While the majority states that "acknowledgement" does not constitute pre-approval, it is unclear then precisely what it does constitute, or what effect "acknowledgement" will have. To this Commissioner it seems to be a significant step toward pre-approval of investment projects. Such pre-approval would be a departure from current law and practice in which utilities make investment decisions and the Commission reviews those investments during the rate-making process. An "acknowledgement" option could tie the hands of future Commissions and

Commissioners and prevent or impede their ability to take action based on factual situations which we cannot at the present time envision.

This Commissioner is not wholly opposed to the Commission pre-approving certain projects. Under a clear statutory and regulatory framework, certain projects would be good candidates for pre-approval, which would provide a greater degree of certainty. However, the Commission needs clear statutory guidance and authority. Further, the Commission should open a separate docket and address pre-approval as an issue on its own. Stakeholders need clarity on the type, size, scale and scope of eligible projects. Rate payers need protections on how cost overruns, mistakes, errors and omissions in the construction or implementation phases are treated. Under transparent and clear rules, all stakeholders must benefit for such a process to succeed. This Commissioner also fears that for Staff, the Office of the Public Counsel, and other stakeholders to properly assess all of the issues arising from the creation of an “acknowledgement” option in the electric utility resource planning cases will require more time and more information than envisioned and will ultimately result in more litigation – a result which I do not believe to be intended by the majority, and a result which should certainly not be the objective of the Chapter 22 rules.

However, despite my concerns regarding the Commission “acknowledgement” option created by the Final Order of Rulemaking, I believe that the Commission’s electric utility

resource planning rules must be updated to reflect the current state of the electric utility industry
– rather than the electric utility industry of the 1990's – and therefore this Commissioner
concur.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III". The signature is stylized with a large, sweeping "R" and a long, horizontal flourish at the end.

Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
On this 15th day of March, 2011.