

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

In the Matter of the Consideration of)	
Adoption of the PURPA Section 111(d)(11))	Case No. EO-2006-0493
Net Metering Standard as Required by)	
Section 1251 of the Energy Policy Act of 2005)	

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

Issue: Has there been a prior state action in Missouri on net metering?

Premise: Missouri's statute and rule related to "net metering" are based on a customer making a **financial** transaction, selling power when the customer's electrical generation from clean energy sources is in excess of immediate needs. In contrast, the applicable provisions of the Energy Policy Act of 2005 (EPAcT) calls for the **offset** of electrical power between a customer-generator and the electric utility, a **non-monetary** exchange. As these are fundamentally different, the Public Service Commission should conclude that the enactment of §386.887, RSMo in 2002 is not comparable to § 1251 of EPAcT, and therefore, does not constitute a prior state action, under the terms of EPAcT.

Discussion:

Under § 1251 (b)(3) of the Energy Policy Act of 2005 (EPAcT), 16 U.S.C. § 2622(d), the obligation to consider the standard does not apply and no new consideration process is required if prior to the enactment of the EPAcT (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. While it may appear that § 386.887, RSMo (Cum. Supp. 2005) meets one or more of the criteria

that would constitute “prior state action”, there are significant differences between the net metering provisions of EPAct and the Missouri statute, Section 386.887, RSMo, that raise questions about the 'comparability' of Missouri's net metering standard.

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

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

Because of its dual metering structure, Missouri's standard also does not "offset electric energy provided by the electric utility to the electric consumer during the applicable billing period." § 1251 of EPAct, 16 U.S.C. § 2621(d)(11). Nor does Missouri define "net metering" as does the federal law. Missouri defines "net metering" as:

a measurement of the difference between the electric energy supplied to a customer-generator by a retail electric supplier and the electric energy generated by a customer-generator that is delivered to a local distribution system in the same point of interconnection

¹ The Interstate Renewable Energy Council was formed in 1982 as a non-profit organization. On its website, IREC identifies its mission "to accelerate the sustainable utilization of renewable energy sources and technologies in and through state and local government and community activities." IREC's members include "state energy offices, city energy offices, other municipal and state agencies, national laboratories, solar and renewable organizations and companies, and individual members. IREC works with many partners including the federal government, national environmental and municipal organizations, regulatory commissions, state-appointed consumer representatives,

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

...service to an electric consumer under which electric energy generated by that electric customer from an eligible on-site generating facility and delivered to the local distribution may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period. 16 U.S.C. § 2621(d)(11).

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

Section 386.887.3, RSMo provides in pertinent part:

Any time of use or other rates charged for electric energy sold to customer-generators shall be the same as those made available to any other customers with the same net electric energy usage pattern including minimum bills and service availability charges.

Rates for electric energy generated by the customer-generator from a qualified net generating unit and sold to the retail electric supplier or its wholesale generator shall be the avoided cost (time of use or nontime of use) of the generation used by the retail electric supplier to serve its other customers.

Section 386.887.4(3)(b) RSMo further provides

If the value of the electric energy generated by the customer-generator exceeds the value of the electric energy supplied by the retail electric supplier, the customer-

generator...shall be credited for the excess value of the electric energy generated ...with this credit appearing on the bill for the following billing period.

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

Missouri's law does not provide for net metering service to any customer with eligible on-site generation as it limits net metering to: "qualified net metering units" which must meet the following requirements among others: (a) is a hydrogen fuel cell or powered by sun, wind or biomass (§386.887.2(5)(b), RSMo); (b) has a generating capacity of no greater than one hundred kilowatts; (§386.887.2(5)(b), RSMo); and (c) meets "the lesser of ten thousand kilowatts or one-tenth of one percent of the capacity necessary to meet the company's aggregate customer peak demand." ;§386.887.5 RSMo.

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