

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Consideration of Adoption)	
of the PURPA Section 111(d)(16) Integrated)	
Resource Planning Standard as Required by)	Case No. EW-2009-0290
Section 532 of the Energy Independence and)	
Security Act of 2007.)	

In the Matter of the Consideration of Adoption)	
of the PURPA Section 111(d)(17) Rate)	
Design Modifications to Promote Energy)	Case No. EW-2009-0291
Efficiency Investments Standard as Required by)	
Section 532 of the Energy Independence and)	
Security Act of 2007.)	

In the Matter of the Consideration of Adoption)	
of the PURPA Section 111(d)(18) Consideration)	
of Smart Grid Investments Standard and PURPA)	
Section 111(d)(19) Smart Grid Information)	Case No. EW-2009-0292
Standard as Required by Section 1307 of the)	
Energy Independence and Security Act of 2007.)	

**RESPONSE OF THE MISSOURI DEPARTMENT OF NATURAL RESOURCES
TO STAFF’S RESPONSE TO ORDER SETTING DATE FOR FILING
PROCEDURAL SCHEDULES AND REQUEST FOR LEAVE TO LATE-FILE**

Comes now the Missouri Department of Natural Resources Energy Center (“MDNR-EC”) responding to the response of Staff of the Missouri Public Service Commission (“Staff”) filed September 22, 2009, to the Missouri Public Service Commission’s (“Commission”) August 3, 2009, Order Granting Motion for Extension of Time and the Commission’s May 6, 2009 Order Consolidating Workshops, Consolidating

Cases and Correcting File Captioning. MDNR-EC offers the following responses to the Commission:

1. Staff does a thorough job of chronicling the various opportunities for interested parties, the Staff, and even the Commissioners to engage in discussions surrounding many of the issues raised by the Energy Independence And Security Act Of 2007 (“EISA”):

June 29 and 30, 2009: Workshop was held in the Governor Office Building,
July 30 and 31, 2009: Workshop was held in the Governor Office Building,
August 14, 2009: Commission issued in File No. EW-2009-0412 a Notice Of Public Meeting To Hear Presentations Regarding IRP Rule Revisions,
August 31, 2009: Presentations were made to the Commission by

- (a) Staff,
- (b) Union Electric Company, d/b/a AmerenUE,
- (c) Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company,
- (d) The Empire District Electric Company,
- (e) Office of the Public Counsel,
- (f) Missouri Department of Natural Resources,
- (g) Noranda Aluminum, Inc.,
- (h) Missouri Industrial Energy Consumers,
- (i) Natural Resources Defense Council, and
- (j) Dogwood Energy, LLC

September 2 and 9, 2009: The Commission discussed the August 31, 2009 public meeting and the direction that the revision process for the Chapter 22 Rules should take.

Added to this list are the workshops held on September 19 and 20, 2009 in the Governor Office Building.

2. Staff includes in its report the following conclusions:

a. None of the four PURPA files need or should be addressed in rulemaking workshop settings separate from the Chapter 22 / Integrated Resource Planning Rules workshops in order to comply with the Energy Independence And Security Act Of 2007 (“EISA”) additional electric

PURPA Section 111(d) standards, i.e., PURPA Sections 11(d)(16), (17), (18), and (19),

b. There are some matters covered by EISA that the Staff believes are required to be addressed in, or are best left to, specific rate cases of the separate electric utilities, i.e. such as cost recovery and rate design, and

c. The distinction between the Senate Bill 376 (“SB 376”) requirements and the EISA / PURPA that the Commission must consider.

3. Staff then provides a list of what the Commission is required to do per SB 376 and what the Commission may do per SB 376. In summary, the Commission is required by SB 376 to conduct (a) rulemaking(s) to:

- (1) define “Total resource cost test” in a rule¹;
- (2) appropriately address the effects of rate design modification associated with demand-side cost recovery following the conclusion of a docket to examine the issue²;
- (3) establish guidelines for customers who have notified the electrical corporation that they do not wish to participate in demand-side programs to be eligible to participate in future demand-side programs³;
- (4) establish the period of time customers who participate in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding⁴;
- (5) determine the documentation to be provided by the customer to the electrical corporation to show that the customer has not received a tax credit as a condition of participation in any demand-side program offered by an electrical corporation⁵; and,
- (6) provide for disclosure of participants in all demand-side programs offered by electrical corporations under this section when such programs provide monetary incentives to the customer.⁶

¹ § 393.1124.2(6), RSMo

² § 393.1124.5, RSMo

³ § 393.1124.8, RSMo

⁴ § 393.1124.9, RSMo

⁵ § 393.1124.14(2), RSMo

⁶ § 393.1124.15, RSMo

Senate Bill 376 states that the Commission may adopt rules to ensure that electric corporations can achieve the goals of the energy efficiency section of SB 376, also known as the Missouri Energy Efficiency Initiative.⁷

4. Staff then asserts that the requirements in SB 376 supersede the requirements of EISA / PURPA, and that the action of the Missouri Legislature when creating and passing the Renewable Energy Standard⁸ is a definitive mandate regarding the value of demand-side management resources. The Staff directs the Commission's attention to the difference between § 393.1124.3, RSMo:

It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demandside programs....

and PURPA Section 111(d)(16), which provides in pertinent part:

....each electric utility shall...(B) adopt policies establishing cost-effective energy efficiency as a priority resource.

Staff then asserts that, prior to passing SB 376, the 94th General Assembly of Missouri (2007) purposefully passed on an opportunity to adopt a state policy establishing cost-effective energy efficiency as a priority resource for investor-owned electric utilities when it passed SB 54, the Renewable Energy Standard. Staff cites § 393.1040, RSMo:

In addition to the renewable energy objectives set forth in sections 393.1025, 393.1030, and 393.1035, it is also the policy of this state to encourage electrical corporations to develop and administer energy efficiency initiatives that reduce the annual growth in energy consumption and the need to build additional electric generation capacity.

⁷ § 393.1124.11, RSMo

⁸ § 393.1030, RSMo

5. MDNR-EC disagrees. Staff's assessment fails to distinguish between treatment of investments and treatment of resources. Staff points to the language from SB 54 and selected language from SB 376 and asserts the "Commission's Chapter 22 Electric Resource Planning Rules are consistent with both of the Missouri Legislature's pronouncements respecting the policy of the state regarding demand-side investments and energy efficiency." Staff fails to take into consideration § 393.1124.4, RSMo:

The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with the goal of achieving all cost-effective demand-side savings."

6. By virtue of SB 376, the Missouri Legislature has established a two-element demand-side energy management policy for this state: (1) implement all cost-effective demand-side programs per § 393.1124.4, RSMo; and (2) allow recovery of all reasonable and prudent costs of delivering those cost-effective demand-side resources equal to traditional investments in supply and delivery infrastructure per § 393.1124.3, RSMo. The first element addresses resources. The second element addresses cost recovery. The very basic, fundamental concept of resource planning is to determine a realistic forecast of the energy load for the future and then determine how best to supply the projected energy needed to fulfill that forecasted load through both supply-side initiatives and demand-side initiatives. The simple equation is: supply-side resources delivered to customers + demand-side resources = forecasted load. Missouri's demand-side energy management policy is to implement all cost-effective demand side programs. In order to do that, the resource planning process must: (1) determine the forecasted load; (2) determine all cost-effective demand-side resources; and then (3) subtract all cost-

effective demand-side resources from the forecasted load to determine the supply side resources needed to meet the forecasted load. In other words, demand side resources first and supply-side resources second. Demand-side resources must be the priority to adhere to the first element of Missouri's established energy efficiency policy set out in § 393.1124.4, RSMo. Furthermore, the policy is to "achiev[e] all cost-effective demand-side savings....." § 393.1124.4, RSMo. To ensure Missouri achieves implementation of all cost-effective demand-side savings, utilities must engage in aggressive, sustained research and analysis to identify this universe of demand-side measures. This universe of possibilities is much larger than the scope of measures seen in the current IRP DSM screening and potential studies being filed with the Commission.

MDNR-EC believes the Missouri Legislature considered the EISA/PURPA Section 111(d)(16) standard in SB 376 with the establishment of § 393.1124.4, RSMo and its directive of "achieving all cost effective demand-side savings". MDNR-EC also believes the Chapter 22 rulemaking workshops docket is the appropriate forum to implement this policy; however, MDNR-EC would note that Staff's rule drafts do not reflect MDNR-EC's understanding of § 393.1124.4, RSMo, as described above.

7. Viewing all cost-effective demand-side resources on a priority basis drives the need for the second element of the demand-side energy management policy for this state: allowing recovery of all reasonable and prudent costs of delivering those cost-effective demand-side resources at a value equal to traditional investments in supply and delivery infrastructure per § 393.1124.3, RSMo. This state policy requirement fulfills the requirements of the State to consider PURPA §111(d)(17):

“(i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
“(ii) providing utility incentives for the successful management of energy efficiency programs;
“(iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
“(iv) adopting rate designs that encourage energy efficiency for each customer class;
“(v) allowing timely recovery of energy efficiency related costs; and
“(vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.”

The Missouri Legislature has clearly established Missouri’s policy regarding cost recovery of the investment in demand-side resources in SB 376:

Section 393.1124.3, RSMo provides:

It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demandside programs....

However, implementation of this policy of the State has not yet occurred. The question remains, “In what forum will the Commission implement this State policy?” The current resource planning rules address cost recovery of demand-side resources in only a limited fashion in subparagraph (2) of 4 CSR 240-22.080, Filing Schedule and Requirements, by allowing the utility to request nontraditional accounting procedures for the recovery of demand-side resource costs. In recent drafts of revisions to Chapter 22, this provision has been deleted. MDNR-EC readily concedes that the Chapter 22 workshops may not be the

appropriate forum to address cost recovery. Cost recovery is more appropriately addressed in utility rate cases. However, the Commission rarely gets an opportunity to consider cost recovery issues fully in rate cases. The Commission can rule only on what is presented in evidence. Often the Commission has only an opportunity to rule on a Stipulation and Agreement among all the parties or the introduction of rates only for a new service or rider. As for IRP case, the Commission usually sees at most a limited request to utilize 4 CSR 240-22-080(2). MDNR-EC agrees with Staff that regarding the implementation of SB 376, some of the provisions will be appropriately addressed in a separate rulemaking from the Chapter 22 rulemaking workshops, and some will be addressed on a case-by-case basis.

8. MDNR-EC also reiterates a position made clear in its Response of the Missouri Department of Natural Resources to Staff's Response to Order Setting Date for Filing Procedural Schedules and Request for Leave to Late-File filed March 13, 2009, in these cases. One element of PURPA Section 111(d)(19) as required by Section 1307(a)(17) of EISA is an annual report to purchasers and other interested persons "on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis."⁹ The EISA/PURPA annual report standard has not been addressed in the Chapter 22 workshops. In MDNR-EC's view, it is reasonable and desirable to require annual disclosure of source and emissions information as required by this EISA/PURPA

standard. MDNR recommends that consideration of the PURPA Section 111(d)(19) be addressed in EW-2009-0324, the Renewable Energy Standard rulemaking workshop docket.

9. WHEREFORE, MDNR-EC respectfully requests the Commission to disregard Staff's opinion that the "Commission's Chapter 22 Electric Resource Planning Rules are consistent with both of the Missouri Legislature's pronouncements respecting the policy of the state regarding demand-side investments and energy efficiency" and direct the Staff to continue to develop rules consistent with the direction provided by the Missouri Legislature. Furthermore, MDNR-EC respectfully requests the Commission to direct that Staff adequately address the reporting standard of PURPA Section 111(d)(19) in the Renewable Energy Standard workshops EW-2009-0324.

Respectfully submitted,

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⁹ *Energy Independence and Security Act*, page 301.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 26th day of October, 2009.

/s/ Shelley A. Woods