

**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) **File 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 Efficiency) **File No. EW-2009-0291**
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)(16) Consideration)
of **Smart Grid Investments Standard** as Required) **File No. EW-2009-0292**
by Section 1307 of the Energy Independence and)
Security Act of 2007.)

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(17) **Smart Grid**)
Information Standard as Required by Section) **File No. EW-2009-0293**
1307 of the Energy Independence and Security)
Act of 2007.)

STAFF RESPONSE TO ORDER ESTABLISHING DEADLINE FOR RESPONSES

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and submits its *Response To Order Establishing Deadline For Responses* as follows:

1. On March 18, 2009, the Commission sent *Notice Regarding Proper File Captioning*.¹

¹ This Response follows the March 18, 2009 *Notice*. Staff did take note of AmerenUE's reference to Congress's correction to the misnumbering of the original legislation. While duly noted, Staff wishes to maintain consistency with the Commission's caption designations. Nonetheless, the renumbering is as AmerenUE indicates in the captions on the first page of its March 13, 2009 Reply. Smart Grid Investments Standard is PURPA Section 111(d)(18) and Smart Grid Information Standard is PURPA Section 111(d)(19).

2. On March 25, 2009, the Commission ordered that all responses to the inquiry delineated by the Commission be filed no later than April 15, 2009. The questions the Commission presented to participants in this *Order* were as follows: “(1) does the prior state action exemption apply to any of the new Public Utility Regulatory Policies Act (“PURPA”) standards encompassed within the Energy Independence and Security Act of 2007 (“EISA”); and (2) should the Commission engage in rulemaking, or some other procedure to adopt any of the new PURPA standards encompassed within the EISA.”²

3. EISA requires the Commission to begin consideration or to set a hearing date for such consideration, within one year after enactment of the standards (December 19, 2008); the Commission satisfied this requirement when the Commission opened the above captioned cases on December 17, 2008, which were later converted into workshop files. It is Staff’s position that the Commission has already addressed two of these standards, and will consider the other two during the rewrite of the 4 CSR 240-22.010 - .080 (“Chapter 22”) Electric Utility Resource Planning Rules (also commonly referred to as “Integrated Resource Planning Rules” or “IRP Rules”) which is to commence on May 18 and 19, 2009. Moreover, the Commission must only consider, not adopt the new PURPA standards.

4. In general, under PURPA Section 112(d) – prior state action – the obligation to consider a particular new standard does not apply and no new consideration process is required if, prior to August 8, 2005: (i) the state implemented the standard (or a comparable standard) for electric utilities under the Commission’s jurisdiction, (ii) the Commission conducted a

² All that is in EISA Section 532 is PURPA Section 111(d)(16) Integrated Resource Planning and PURPA Section 111(d)(17) Rate Design Modifications To Promote Energy Efficiency Investments. All that is in EISA Section 1307 is PURPA Section 111(d)(16) Consideration Of Smart Grid Investments and PURPA Section 111(d)(17) Smart Grid Information. Thus, citation to EISA Section 532 or EISA Section 1307 is actually no more than citation to the PURPA 111(d) standards contained in EISA Section 532 or the PURPA 111(d) standards contained in EISA Section 1307.

proceeding considering the implementation of the standard (or a comparable standard) for electric utilities under its jurisdiction, or (iii) the state’s legislature voted on implementation of the standard (or a comparable standard) for electric utilities under Commission’s jurisdiction.³

Case File No. EW-2009-0290: PURPA Section 111(d)(16) Integrated Resource Planning Standard as Required by Section 532 EISA

5. Addressing the Commission’s first question in regards to PURPA Section 111(d)(16) and EISA Section 532 “does the prior state action exemption apply to any of the new PURPA standards encompassed within the EISA”; Staff believes that the Commission has acted upon the mandate to consider or to have previously considered and thus no further action is needed.

6. Staff believes that the Commission already considered PURPA Section 111(d)(16) as required by EISA Section 532 in the adoption and application of its Chapter 22 Rules.

7. Union Electric Company, d/b/a AmerenUE (“AmerenUE”) states that EISA mandates that electric utilities give energy efficiency resources priority treatment.⁴ The Missouri Department of Natural Resources (“DNR”) does not go quite this far.⁵ The Staff again notes that the controlling provision of PURPA respecting the Section 111(d)(16) and (17) standards, as well as all of the other PURPA Section 111(d) standards, is PURPA Section 111(a), which states as follows:

³ See *Report and Order* issued July 12, 2007, Commission Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0495, EO-2006-0496, and EO-2006-0497. The Commission determined that Prior State Actions had taken place in regards to Energy Policy Act of 2005.

⁴ Additionally, AmerenUE alleges that the Commission lacks a coherent policy in regards to energy efficiency and that the Commission is actually discouraging energy efficiency. AmerenUE Reply, p. 4.

⁵ DNR Response, p. 8.

Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) of this section and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter. For purposes of such consideration and determination in accordance with subsections (b) and (c) of this section, and for purposes of any review of such consideration and determination in any court in accordance with section 123 of this title, the purposes of this chapter supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

8. Staff disagrees with AmerenUE's and DNR's contention that EISA is mandating that electric utilities give energy efficiency resources priority treatment. PURPA and EISA only require that State Commissions give consideration to PURPA Section 111(d)(16) if it has not previously given consideration to the Integrated Resource Plan standard.

9. The Commission gave consideration and actually adopted an Integrated Resource Planning Standard when it adopted Chapter 22 as part of the Commission's Rules.

10. DNR states that the Commission's adoption of 4 CSR 240-22.010(2)(A) was in response to the Energy Policy Act of 1992 ("EPACT 1992") and thus does not constitute proper consideration under the EISA and the Commission must give consideration to PURPA Section 111(d)(16) and EISA Section 532. DNR is mistaken.

11. Chapter 22 of the Commission Rules was not developed in response to PURPA. The development of Chapter 22 began well before EPACT 1992 became law. In 4 CSR 240-22.010 the Commission chose to require the electric utilities to place an equal emphasis on all resource types whether supply- or demand-side. Even if the Commission had not adopted Chapter 22 Rules, the Commission still met the PURPA Section 111(d)(16) and EISA Section 532 requirements when it gave consideration to energy efficiency in the adoption of Chapter 22.

12. In regards to the second question posed by the Commission, “should the Commission engage in rulemaking, or some other procedure to adopt any of the new PURPA standards encompassed within the EISA,” Staff believes that it is not necessary to engage in rulemaking or some other procedure because the Commission previously adequately considered the standard and Staff is not recommending that any further action on the part of the Commission is necessary.

13. However, the Commission may choose to further consider the Integrated Resource Planning Standard. If the Commission decides to do so, the appropriate forum would be the upcoming rewrite of the Chapter 22 Rules.

Case File No. EW-2009-0291: PURPA Section 111(d)(17) Rate Design Modifications to Promote Energy Efficiency Investments Standard as Required by EISA Section 532

14. Addressing the Commission’s first question in regards to PURPA Section 111(d)(17) and EISA Section 532 “does the prior state action exemption apply to any of the new PURPA standards encompassed within the EISA”; Staff believes that the Commission has considered PURPA Section 111(d)(17) and EISA Section 532 in regards to rate design modifications to promote energy efficiency investments when adopting the Chapter 22 Rules. Commission Rule 4 CSR 240-22.020(18) defines energy-management measure as “any device, technology, rate structure or operating procedure that makes it possible to deliver an adequate level and quality of end-use energy service while using less energy than would otherwise be required.” Commission Rule 4 SCR 240-22.050(1) states: “The analysis of demand-side resources shall begin with the development of a menu of energy efficiency and energy management measures that provide broad coverage of – (A) All major customer classes . . . ; (B)

All significant decision-makers . . . ; (C) All major end users . . . and; (D) Renewable energy sources and energy technologies . . .”.

15. DNR also finds that the consideration and adoption of Chapter 22 was not sufficient consideration under EISA Section 532(a)(17)(i)-(vi) because not all rate design options would manifest an integrated resource plan. While it may not be possible to implement some rate designs within a Chapter 22 compliance filing case, Staff believes that the evaluation of rate design envisioned by PURPA and EISA should be conducted as a part of the electric utility’s resource planning process. Rate design for electrical corporations has traditionally been effectuated in rate cases. Through the years there have been some major customer class cost of service – rate design cases for individual electrical corporations, but the customer class cost of service – rate design decisions of the Commission have not been effectuated by the Commission until the electrical corporation’s next rate case or next rate cases.

16. AmerenUE states that the Chapter 22 Rules do not address cost recovery or performance incentives addressed in PURPA Section 111(d)(17) and EISA Section 532. While Chapter 22 does not explicitly prescribe nontraditional cost recovery of energy efficiency program costs, 4 CSR 204-22.080(2) allows the electric utility to request nontraditional ratemaking treatment for demand-side costs. AmerenUE in some of its Chapter 22 compliance filings discussed the need for nontraditional ratemaking treatment, but never requested any specific treatment. The only Chapter 22 compliance filing in which an electric utility requested nontraditional ratemaking treatment was the Submission By Kansas City Power & Light Company Of Supplemental Information Concerning Its Integrated Resource Plan, filed on December 24, 2008, in pending Case No. EE-2008-0034, just prior to the January 8, 2009 filing

of the Staff Report addressing Kansas City Power & Light Company's August 5, 2008 Chapter 22 compliance filing.

17. Staff believes that the Commission has already considered this standard in its adoption of the Chapter 22 Rules, and subsequently has addressed this standard in the electric resource plan compliance filings of the electrical corporations covered by the Chapter 22 Rules.⁶

18. The second question the Commission posed is "should the Commission engage in rulemaking, or some other procedure to adopt any of the new PURPA standards encompassed with the EISA?" Staff believes that it is not necessary to engage in rulemaking or some other procedure since the Commission previously adequately considered the standard in the adoption of the Chapter 22 Rules and Staff is not recommending that any further action on the part of the Commission is necessary.

19. However, the Commission may choose to further consider this integrated resource planning standard. If the Commission decides to do so, the appropriate forum would be the upcoming rewrite of the Chapter 22 Rules.

Case File No. EW-2009-0292: PURPA Section 111(d)(16) Smart Grid Investments Standard as Required by EISA Section 1307

20. PURPA Section 111(d)(16) as required by Section 1307(a)(16) of EISA, states as follows:

Section 111(d)(16) Consideration Of Smart Grid Investments

(A) In general – Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including --

- (i) total costs;

⁶ See generally Commission Case Nos. EO-2007-0409; EE-2008-0034, EO-2004-0298; EO-2008-0069.

- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance; and
- (vi) societal benefit.

(B) Rate recovery – Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) Obsolete equipment – Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

21. In regards to Commission question “(1) does the prior state action exemption apply to any of the new PURPA standards encompassed within the EISA,” Staff and other participants in this workshop file believe that prior state action has not taken place.

22. As stated in Staff’s February 23, 2009 response, Staff believes that consideration of PURPA Section 111(d)(16)(A) is integral to the electric resource planning process and will be a part of the revision of the Chapter 22 Rules. The review for Chapter 22 is scheduled to begin on May 18 and 19, 2009.⁷ The goal is to submit a revision of the Chapter 22 Rules to the Commission by mid- to late-September 2009.

23. Staff believes that during the Chapter 22 workshops and the formal Chapter 22 rulemaking rewrite, that all issues in reference to PURPA Section 111(d)(16)(A) and (C) will be considered by the Commission.

⁷ Workshops have been or will be scheduled on May 18-19, 2009, June 29-30, 2009, and late July or early August 2009. The two day workshops are or will be scheduled for the Ballroom of the Governor Office Building.

24. AmerenUE suggests that Chapter 22 is not the appropriate avenue for the Commission to consider PURPA Section 111(d)(16)(A) and (C) because the Chapter 22 Rules cannot address the majority of the characteristics of the new PURPA sections. Staff still believes that because of the essential tie between this new PURPA standard and electric resource planning, it makes more sense to put consideration of this standard with the rewrite of the Chapter 22 Rules. If in the rewriting of Chapter 22 it becomes clear that separate Smart Grid Investment Rules are needed, that can be more easily accomplished than having a separate smart grid investment rulemaking, and then determine that Smart Grid Investment Rules should have been in the context of the Chapter 22 Rules rewrite.

25. In compliance with PURPA Section 111(d)(16)(B), Rate Recovery, the Commission allows for recovery from ratepayers of the capital, operating expenditures, and other costs relating to the deployment of a “qualified smart grid system,” including a reasonable rate of return on the capital expenditures for the deployment of components of the “qualified smart grid system,” in all electric utility rate cases brought before the Commission. Even though the Staff has indicated that PURPA Section 111(d)(16)(C) should be considered in the rewrite of the Chapter 22 Rules, Staff should note that there is a ratemaking element to this item that would be addressed in the electrical corporation’s individual rate cases.

26. DNR agrees with Staff that the Chapter 22 revision is an appropriate venue to address some of the issues in the Smart Grid Investment Standards, and requests that the Commission direct the Staff to file a report documenting the discussion and recommendations from the Chapter 22 workshops regarding the issues referenced above.

27. Staff believes that if DNR would like a report of the workshops, DNR can volunteer to produce the reports or the Commission could have the workshops transcribed and DNR can volunteer to produce reports from the transcripts.

Case File No. EW-2009-0293: PURPA Section 111(d)(17) Smart Grid Information Standard as Required by EISA Section 1307

28. Staff's answer to the Commission's question "(1) does the prior state action exemption apply to any of the new PURPA standards encompassed within the EISA" is that there has been limited prior state action to address PURPA Section 111(d)(17) Smart Grid Information Standard respecting electrical corporations under the Commission's jurisdiction.

29. In response to Commission question "(2) should the Commission engage in rulemaking, or some other procedure to adopt any of the new PURPA standards encompassed with the EISA," Staff believes that the Chapter 22 Rules rewrite will further address PURPA Section 111(d)(17).

30. File No. EW-2009-0293 addresses PURPA Section 111(d)(17) as required by Section 1307(a)(17) of EISA, which requires as follows:

Smart Grid information

(A) Standard – All electricity purchasers shall be provided direct access, in written or machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

(B) Information – Information provided under this section, to the extent practicable, shall include:

(i) Prices – Purchasers and other interested persons shall be provided with information on –

(I) time-based electricity prices in the wholesale electricity market; and

(II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) Usage. – Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.

(iii) Intervals and projections – Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) Sources – Purchasers and other interested persons shall be provided annually with written information 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.

(C) Access – Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

31. AmerenUE states that no previous consideration has taken place in regards to PURPA Section 111(d)(17) and EISA Section 1307(a)(17). However, AmerenUE does not believe the Chapter 22 Rules rewrite is the appropriate forum for the Commission to determine whether or not to adopt the standard. AmerenUE would like to consolidate PURPA Section 111(d)(16) and PURPA Section 111(d)(17) into one forum for the Commission to give consideration to the Smart Grid Investment Standard and Smart Grid Information Standard.

32. DNR states that the Commission has not previously addressed PURPA Section 111(d)(17). However, for some of the items which DNR appears to contend are covered by PURPA Section 111(d)(17) Smart Grid Information, DNR asserts that the Commission should consider rulemaking proceedings, but not in the context of the Chapter 22 rewrite.

33. Staff disagrees with both AmerenUE and DNR that it is necessary to open a separate forum or forums to address PURPA Section 111(d)(17) Smart Grid Information. Staff believes that the scheduled workshops and rulemaking for the rewrite of the Chapter 22 Rules will properly address PURPA Section 111(d)(17) and the Commission will be able to adequately consider the standard. If in the rewriting of Chapter 22 it becomes clear that separate Smart Grid Information Rules are needed, that can be more easily accomplished than having a separate smart grid information rulemaking, and then determine that it should have been in the context of the Chapter 22 rewrite. DNR raises in its comments the Missouri Renewable Energy Standard (“RES”) rulemaking workshop proceeding, Case No. EW-2009-0324, that is now occurring. There has been nothing preventing DNR from proposing in the RES rulemaking workshop proceeding and the forthcoming RES rulemaking any Smart Grid Information provisions it believes appropriate.

34. The DNR agrees with Staff that the Chapter 22 Rules rewrite is an appropriate avenue to address some of the issues in the Smart Grid Information Standard, and requests that the Commission direct Staff to file a report documenting the discussion and recommendations from the Chapter 22 workshops regarding each requirement of the new PURPA standard.

35. Staff believes that if DNR would like a report of the workshops, DNR can volunteer to produce the reports or the Commission could have the workshops transcribed and DNR can volunteer to produce reports from the transcripts.

WHEREFORE, Staff respectfully responds to the Commission’s request for responses and states again that the Commission has already addressed EW-2009-0290: Integrated Resource Planning Standard and EW-2009-0291 Rate Design Modifications to Promote Energy Efficiency Investments Standards by prior state action and those elements of EW-2009-0292 Smart Grid

Investments Standard and EW-2009-0293 Smart Grid Information Standard not previously considered by the Commission can be considered through the rewrite of the Chapter 22 Electric Utility Resource Planning Rules, which is to begin with a workshop scheduled for May 18 and 19, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 18th day of April, 2009.

/s/ Steven Dottheim