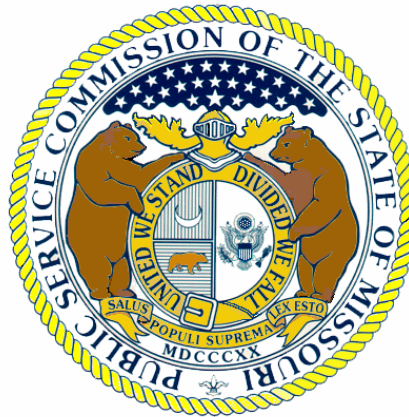


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Consideration of Adoption of the PURPA Section 111(d)(11) Net Metering Standard as Required by Section 1251 of the Energy Policy Act of 2005.))))	<u>Case No. EO-2006-0493</u>
 In the Matter of the Consideration of Adoption of the PURPA Section 111(d)(14) Time-Based Metering and Communications Standard as Required by Section 1252 of the Energy Policy Act of 2005.)))))	 <u>Case No. EO-2006-0496</u>
 In the Matter of the Consideration of Adoption of the PURPA Section 111(d)(15) Interconnection Standard as Required by Section 1254 of the Energy Policy Act of 2005.))))	 <u>Case No. EO-2006-0497</u>

REPORT AND ORDER

Issue Date: July 12, 2007

Effective Date: July 22, 2007

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) Net Metering) **Case No. EO-2006-0493**
Standard as Required by Section 1251 of the)
Energy Policy Act of 2005.)

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(14) Time-Based)
Metering and Communications Standard as) **Case No. EO-2006-0496**
Required by Section 1252 of the Energy Policy)
Act of 2005.)

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(15) Interconnection) **Case No. EO-2006-0497**
Standard as Required by Section 1254 of the)
Energy Policy Act of 2005.)

APPEARANCES

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REGULATORY LAW JUDGE: Harold Stearley, Judge.

REPORT AND ORDER

Syllabus: This Report and Order delineates the final disposition of three workshop cases involving new Public Utility Regulatory Policy Act (“PURPA”) standards propagated by the federal government in the Energy Policy Act of 2005 (“EPAAct”).

Procedural History

On June 22, 2006, the Staff of the Missouri Public Service Commission filed motions requesting that the Commission establish cases, provide notice, set intervention deadlines and schedule a prehearing conference for the purpose of determining whether to adopt the Net Metering Standard established in Section 1251 of EPAAct, the Time-Based Metering and Communications Standard established in Section 1252 of EPAAct, and the Interconnection Standard established in Section 1254 of EPAAct. The Commission granted Staff’s motions on June 23, 2006. A deadline was set for intervention and numerous entities intervened.

A prehearing was held in these matters on August 4, 2006, and a technical conference followed on September 22, 2006. On September 29, 2006, the Staff filed “Suggestions Regarding Future Proceedings.” The parties were given until October 13, 2006, to respond to Staff’s suggestions. Numerous parties responded. Many suggested that the cases could be dismissed asserting the Commission had already taken sufficient action to comply with the new federal standards.

On October 16, 2006, the Commission directed its Staff to file a motion for a final order of rulemaking requesting that the Commission open a single rulemaking case to determine if any of the Commission’s prior actions applied to these standards and to proceed with rulemaking if so required. The parties responded and on December 22, 2006, the Staff retracted its motion to open a rulemaking docket and instead requested the

Commission make a threshold determination as to whether prior Commission or legislative action applied to these standards.

A provision in EPAAct directs state commissions not to take any action regarding the new standards if that commission, or that state's legislature, had taken any prior action to consider or implement a comparable standard. A decision by the Commission that prior state action satisfied EPAAct's consideration/implementation requirement would terminate these proceedings, while an opposite decision would require the Commission to decide if rulemaking or other action was required to adopt the standards.

On December 26, 2006, the Commission set a date for the parties to specifically address the threshold question on the applicability of the prior state action exemption to the adoption of the Net Metering Standard, the Time-Based Metering and Communications Standard, and the Interconnection Standard. The parties were given until February 9, 2007, to file these additional responses and fully articulate their positions on this threshold issue.

On February 16, 2007, after reviewing all of the parties' responses, the Commission set these matters for an On-the-Record Presentation to take testimony from counsel and subject matter experts representing the interested parties. The Commission held its On-the-Record Presentation on April 25, 2007, and took testimony on whether the prior state action exemption applied to these three PURPA standards. These three matters were not formally consolidated; however, because the Commission heard arguments on these matters simultaneously, it is issuing the decision in these matters in one Report and Order.

Findings of Fact

With the exception of delineating the exact language of the standards in question, and the parties' positions regarding those standards, both factual recitations, the Commission's determination as to whether the prior state action exemption applies to these standards is purely a determination of law. Consequently, no additional findings of fact, beyond what the Commission has outlined below, are required.

The PURPA Standards

The new PURPA standards enacted with EPAct that the Commission is considering in this Report and Order are:

The Net Metering Standard - PURPA Section 111(d)(11):

Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

The Time-Based Metering Standard - PURPA Section 111(d)(14):

The Commission is required make a determination whether:

(A) ... [E]ach electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing

such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

The Interconnection Standard - PURPA Section 111(d)(15):

Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'interconnection service' means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

Prior State Action Exemption Standard

The original language from PURPA Section 111, when enacted in 1978 provided a procedure for state commissions to follow when considering and making determinations on whether to adopt the federal standards. That procedure is applicable to the newly enacted PURPA sections, unless the prior state action exemption (defined in detail later in this order) is applicable. The procedure for consideration and determination of the new PURPA standards is as follows:

PURPA SECTION 111(16 U.S.C. § 2621) Consideration and determination respecting certain ratemaking standards

(a) Consideration and determination

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 2633 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.**

(b) Procedural requirements for consideration and determination

(1) The consideration referred to in subsection (a) of this section shall be made after public notice and hearing. The determination referred to in subsection (a) of this section shall be—

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 2622 (a) of this title, and in sections 2631 and 2632 of this title, the procedures for the consideration and determination referred to in subsection (a) of this section shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) Implementation

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility **may, to the extent consistent with otherwise applicable State law—**

(A) **implement** any such standard determined under subsection (a) of this section to be appropriate to carry out the purposes of this chapter, or

(B) **decline to implement** any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) of this section which is determined under subsection (a) of this section to be appropriate to carry out the purposes of this chapter, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8) of this section, such authority shall—

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

It is important to note that PURPA Section 111 only requires the Commission to consider the new standards.¹ Implementation is discretionary, and complete exemption from subsections (b) and (c) above exists if a state legislature or commission has taken

¹ PURPA Section 111(a), (b), and (c) (16 U.S.C. § 2621(a), (b), and (c)); Transcript p. 61, lines 1-6.

prior action to consider or implement a comparable standard. The applicable exemption language for PURPA standards 111(d)(11), (14) and (15) is set forth in PURPA Sections 112 (d), (e), and (f), corresponding to Sections 16 U.S.C. §2622(d), (e) and (f), which are summarized below:

Prior State Actions –

Subsections (b) Procedural requirements for consideration and determination, and (c) Implementation:

shall not apply to the standard established by paragraphs (11) through (13) of section 111(d) [16 U.S.C. Section 2621(d)(11)-(13)] of this title;

shall not apply to the standard established by paragraphs (14) of section 111(d) [16 U.S.C. Section 2621(d)(14)] of this title; and,

shall not apply to the standard established by paragraphs (15) of section 111(d) [16 U.S.C. Section 2621(d)(15)] of this title:

in the case of any electric utility in a State if, before the enactment of these subsections [Enacted August 8, 2005] --

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.

Comparability Standard

The Commission must decide if it or the Missouri legislature considered, voted upon, or implemented a comparable standard to determine if the prior state action exemption applies. PURPA Section 124 offers guidance for determining if a “comparable” standard has been considered that would constitute prior state action and exempt or prohibit the

Commission from taking any further action in relation to the newly adopted standards. That section provides:

PURPA SECTION 124 (16 U.S.C. § 2634) Prior and pending proceedings

For purposes of subchapters I and II of this chapter, and this subchapter, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before November 9, 1978, and actions taken before such date in such proceedings shall be treated as complying with the requirements of subchapters I and II of this chapter, and this subchapter if such proceedings and actions **substantially conform** to such requirements. For purposes of subchapters I and II of this chapter, and this subchapter, any such proceeding or action commenced before November 9, 1978, but not completed before such date, shall comply with the requirements of subchapters I and II of this chapter, and this subchapter, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 2631 (c) of this title. In the case of each standard established by paragraphs (11) through (13) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs (11) through (13). In the case of the standard established by paragraph (14) of section 111(d), the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraph (14). In the case of each standard established by paragraph (15) of section 111(d), the reference contained in this subsection to the date of enactment of the Act shall be deemed to be a reference to the date of enactment of paragraph (15).

Substantial is defined as relating to, or having substance; material; true or real; not imaginary; not illusive.² Consequently, for a comparable consideration to have occurred, the Commission, or the State Legislature, must have considered a law or regulation sufficiently similar in substance to the new PURPA regulations as to trigger the prior state action exemption.

² Black's Law Dictionary, Sixth Edition, West Publishing Co., 1990, p. 1428; The American Heritage College dictionary, 3rd Edition, Houghton Mifflin Company, 1993, p. 1354.

The Parties' Positions

The parties have essentially divided asserting two opposing positions or legal arguments in these matters. Those positions are summarized as follows:

The Net Metering Standard - PURPA Section 111(d)(11):³

Staff, The Empire District Electric Company, Union Electric Company, d/b/a AmerenUE, Aquila, Inc., Kansas City Power and Light Company ("collectively Staff and the Utilities") all believe this case can be closed based upon the Commission having taken prior state action. In 2002, the Consumer Clean Energy Act, Section 386.887 RSMo, Cum. Supp. 2006,⁴ became law in Missouri. These parties argue that this legislation clearly defines what constitutes "net metering" in Missouri, and it is not permissible for the Commission to adopt net metering provisions contrary to this statute.⁵ Consequently, the prior state action exemption applies in this case, and no further Commission activity is necessary or could be implemented in this area until such time as the legislature decides to change the applicable statute.

Additionally, Staff and the Utilities assert that while Missouri may use two meters to measure usage and generation, and prescribe a pricing schedule that compensates the utility at retail rates while providing the customer-generator avoided rates for surplus

³ This year, the Missouri legislature considered and enacted S.B. 54 (See also S.B. 674), a portion of which (Section 386.890) was entitled the "Easy Connection Act." This bill provides additional requirements upon electric suppliers to make net metering available to customer-generators. This bill was delivered to the Governor on May 30, 2007, but has not yet been signed by the Governor. Its effective date, should it be signed into law, is January 1, 2008. This legislative action has occurred after August 8, 2005, the date of enactment of the new PURPA standards. Consequently, it cannot be considered prior state action for purposes of evaluating whether the exemption applies.

⁴ All references to Section 386.877 throughout this order refer to RSMo, Cum. Supp. 2006.

⁵ RSMo Section 386.887; Transcript pp. 59-79. The Commission adopted a Net Metering Rule, 4 CSR 240-20.065, in 2003 to implement Section 386.877.

returned to the grid, this method is in fact more equitable.⁶ Staff and the Utilities claim that Missouri's system of net metering avoids the inherent problem with a one-to-one offset at the retail rate, which would, in fact, cause ratepayers to subsidize customer-generators by providing credit to the customer-generator for all of the costs associated with generation and delivery, as opposed to only the fuel component of the rate.⁷ Consequently, Staff and the Utilities assert that Missouri's Net Metering standard is the functional equivalent of any other net metering standard and is comparable the PURPA standard.⁸

On the other hand, DNR, Concerned Citizens of Platte County, Sierra Club, Ozark Energy Services, Mid-Missouri Peaceworks, Burroughs Audubon Society and Heartland Renewable Energy Society ("collectively Concerned Citizens") all believe the Commission should engage in rulemaking to comply with this standard.⁹ These parties argue that 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.¹⁰ In contrast, the applicable provisions of the EPAct call for the offset of electrical power between a customer-generator and the

⁶ This method has also been referred to as being a "buy-retail/sell-wholesale" method. Transcript, p. 43, lines 19-25.

⁷ See the testimony of Warren T. Wood, Commission's Utility Operations Division Director; James C. Wakins, Commission's Manager, Economic Analysis; David W. Gibson, Empire's VP of Regulatory & General Services; Wilbon Cooper, AmerenUE's Manager of Rate Engineering & Analysis; J. Matt Tracy, Aquila's Manager of Regulatory Services; Transcript pp. 22-82.

⁸ *Id.* Even Patrick J. Wilson, VP Heartland & Ozark Renewable Energy Society, who takes the opposite position from Staff and the Utilities as to whether Missouri's standard satisfies the PURPA standard, testified that Missouri's metering standard is the functional equivalent of PURPA's Net Metering Standard, so long as, in his opinion, the electricity that goes back onto the grid is at a one-to-one offset. Transcript p. 23.

⁹ Note: The Office of Public Counsel ("OPC") concurred with DNR's position in Case Nos. 0493 and 0497. OPC did not articulate a position for Case No. 0496.

¹⁰ See the testimony of Richard Anderson, Energy Policy Analyst/Planner, Missouri Energy Center for DNR; Patrick J. Wilson, VP Heartland & Ozark Renewable Energy Society; Transcript pp. 22-82.

electric utility, a non-monetary exchange.¹¹ In the instances when a customer-generator produces net excess generation, it is usually forfeited and no financial purchase occurs between the utility and the customer-generator.¹²

The Concerned Citizens assert that Missouri's system is "dual-metering" not "net-metering," and because these are fundamentally different, the Commission should conclude that Section 386.887 is not comparable to the new PURPA standard, and therefore its enactment does not constitute prior state action.¹³

The Time-Based Metering Standard - PURPA Section 111(d)(14):

Staff and the Utilities all believe this case can be closed based upon prior state actions. These parties claim that all Commission regulated electric utilities offer optional time-of-day rates that change by season, with higher rates in the summer and lower rates in the winter and with higher rates during on-peak periods and lower rates during off-peak periods for all customer classes.¹⁴ Each utility also offers some form of interruptible/curtailable rate that provides credits for consumers with large loads who enter into pre-established peak load reduction agreements.¹⁵ Some, but not all, Commission-regulated electric utilities offer real-time pricing, and all have different metering options.¹⁶

Each of the rates discussed above is set forth in a tariff reviewed, authorized and

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See the testimony of James C. Wakins, Commission's Manager, Economic Analysis; David W. Gibson, Empire's VP of Regulatory & General Services; Wilbon Cooper, Ameren's Manager of Rate Engineering & Analysis; J. Matt Tracy, Aquila's Manager of Regulatory Services; Chris B. Giles, KCPL's VP of Regulatory Affairs; Transcript pp. 82-107. See also Commission rules 4 CSR 240-22.050, Demand-Side Resource Analysis, and 4 CSR 240-20.065(3)(E)(1), Net Metering, Time-of-use rates.

¹⁵ *Id.*

¹⁶ *Id.*

implemented by action of the Commission. Therefore, according to Staff and the Utilities the prior state action exemption applies in this case and no further Commission action is required under the federal standard.¹⁷

The Concerned Citizens believe the Commission should engage in rulemaking to comply with this standard.¹⁸ These parties all assert that Missouri has not acted on or otherwise considered the same or a comparable standard and question whether individual company tariffs would constitute a comparable standard.¹⁹ Additionally, the Concerned Citizens question whether a company tariff encompassing a time-based rate schedule also enables electric consumers to manage costs through advanced metering and communications technology.²⁰

AARP, who intervened solely in this matter and not in the other cases being addressed in this order, did not articulate a particular position on this standard. AARP simply asks that whatever the Commission decides that participation with time-based metering should remain voluntary for consumers.

The Interconnection Standard - PURPA Section 111(d)(15):

Staff and the Utilities all believe that compliance tariffs would satisfy the requirements of this standard and would constitute sufficient action eliminating the need for any rulemaking proceeding. These parties assert the Consumer Clean Energy Act, Section 386.887 required the Commission to adopt a net metering rule; i.e. the

¹⁷ *Id.* See also the pleadings of these parties filed throughout the pendency of these matters.

¹⁸ DNR is not a party to this case and not part of the Concerned Citizens for the purposes of EO-2006-0496.

¹⁹ See testimony of Patrick J. Wilson, VP of Heartland & Ozark Renewable Energy Society, and comments of Henry Robertson, Attorney for Great Rivers Environmental Law Center; Transcript pp. 82-107.

²⁰ *Id.*

Commission's Net Metering Rule (4 CSR 240-20.065).²¹ Additionally, the Commission's Cogeneration Rule, 4 CSR 240-20.060, is interrelated to the Net Metering Rule laying out additional requirements for interconnection in relation to net metering.

Since the adoption of 4 CSR 240-20.065, a new Institute of Electrical Electronics Engineers ("IEEE") standard has been developed; the IEEE 1547 "Interconnecting Distributed Resources with Electric Power Systems." While the Commission adoption of the net metering provisions of 4 CSR 240-20.065, including the prior IEEE standard, and the cogeneration provisions of 4 CSR 240-20.060 would constitute prior state action on this standard, the change in IEEE standards renders the prior state action exemption partially inapplicable to the interconnection provisions of this rule.²² In order to adopt the latest applicable IEEE interconnection standard, Staff and the Utilities assert it will be necessary to either revise 4 CSR 240-20.065 or require all of the electric utilities to revise their tariffs to specifically identify compliance with IEEE 1547 as a criterion for approval of customer interconnection of a distributed generation source.²³

Staff and the Utilities also note that other standards in the Clean Energy Act do not conflict with the new IEEE 1547 standard and consumers would still be required to comply with the other standards in the statute. Thus, the new IEEE 1547 standard does not have to be the exclusive standard to be comparable to the new PURPA standard.²⁴ Additionally, while the new IEEE standard does address systems larger than the 100 kW systems

²¹ See the testimony of Warren T. Wood, Commission's Utility Operations Division Director; Transcript pp. 107-117.

²² *Id.*

²³ *Id.*

²⁴ *Id.* Section 386.877.7 requires that in addition to the IEEE Codes, each qualified net metering unit used by

encompassed in the Commission's current Net Metering Rule, adopting this would merely create a subset of net metering interconnection, which does not conflict with the Consumer Clean Energy Act.²⁵

The Concerned Citizens believe the Commission should engage in rulemaking to comply with this standard. These parties assert this PURPA standard says that interconnection "shall be offered based upon" IEEE Standard 1547. Section 386.887.7, mentions IEEE among other standard-setting agencies but is not based on IEEE 1547 to the exclusion of other standards.²⁶ The Concerned Citizens assert that in its current form IEEE 1547 is supposed to be the uniform standard for interconnection of small systems. The Concerned Citizens claim the new standard creates a conflict with Section 386.877.²⁷ Additionally, the Concerned Citizens express concern with the 100 kW system restrictions in the Commission's current Net Metering Rule.²⁸

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Net Metering Standard - PURPA Section 111(d)(11):

In 2002, when enacting Section 386.887, the Missouri legislature defined what constitutes net metering for Missouri regulated utilities and it is not permissible for the

a customer-generator may meet the interconnection standards established by the Commission, the national Electrical Safety Code, National Electrical Code and Underwriters Laboratories.

²⁵ *Id.*

²⁶ See the testimony of Richard Anderson, Energy Policy Analyst/Planner, Missouri Energy Center for DNR; Frank Cunningham, Energy Engineer, Missouri Energy Center for DNR; Transcript pp. 107-117.

²⁷ *Id.*

²⁸ *Id.* See also the pleadings of these parties filed throughout the pendency of these matters.

Commission to adopt net metering provisions contrary to this statute. The Commission also finds that Section 386.887 is a comparable standard to the new EPAct standard. Moreover, in response to the enactment of this section, the Commission adopted compliant cogeneration and net metering rules, 4 CSR 240-20.060 and 4 CSR 240-20.065, respectively.²⁹ The prior state action exemption is satisfied by either of the actions taken by the legislature or the Commission, and no further Commission action is necessary in this area until such time as the legislature decides to change the applicable statute.

The Time-Based Metering Standard - PURPA Section 111(d)(14):

The Commission's Electric Utility Resource Planning Rules (4 CSR 240-22) require each electric utility to identify and evaluate energy-management measures (devices, technologies, rate structures, or operating procedures) that make it possible to alter the time pattern of electricity usage so as to require less generating capacity or to allow the electric power to be supplied from more fuel-efficient generating units. Specifically, Commission Rules 4 CSR 240-22.050, Demand-Side Resource Analysis, and 4 CSR 240-20.065(3)(E)(1), Net Metering, Time-of-use rates, require the regulated utilities to evaluate and develop demand-side programs and offer guidance on the application of time-of-use rates.

Adoption of these rules constitutes prior state action on the part of the Commission; however, to the extent these rules may not fully encompass the provisions of the new PURPA standard, individual company tariffs completely satisfy the standard. All Commission regulated electric utilities offer optional time-of-day rates that change by season, with higher rates in the summer and lower rates in the winter and with higher rates

²⁹ The rules became effective on April 30, 2003 and August 30, 2003, respectively.

during on-peak periods and lower rates during off-peak periods for all customer classes. Each utility also offers some form of interruptible/curtailable rate that provides credits for consumers with large loads who enter into pre-established peak load reduction agreements. Some, but not all, Commission-regulated electric utilities offer real-time pricing, and all have different metering options.

The rates for these services are set forth in tariffs reviewed, authorized and implemented by action of the Commission. Tariffs, once reviewed and approved by the Commission, have the same force and effect as state statutes.³⁰ Review and approval of the tariffs constitutes prior state action per the guidelines of the exemption, and no further Commission activity is required under the federal standard.

The Interconnection Standard - PURPA Section 111(d)(15):

The Consumer Clean Energy Act, Section 386.887 became effective on August 28, 2002, and this legislation required the Commission to adopt a net metering rule. Subsequent rulemaking resulted in the Commission's Net Metering Rule, 4 CSR 240-20.065, and the specific provisions of this rule include interconnection provisions for small scale customer-generators. At the time this rule was being developed, the IEEE and Underwriters Laboratory standards then in effect were incorporated into the rule. Since adoption of 4 CSR 240-20.065, a new IEEE standard has been developed. This new standard is IEEE 1547 "Interconnecting Distributed Resources with Electric Power Systems."

³⁰ *A.C. Jacobs and Company v. Union Electric Company*, 17 S.W.3d 579, 581 (Mo. App. 2000); *State ex rel. St. Louis County Gas Co. v. Public Service Commission of Missouri*, 286 S.W. 84, 86, (Mo. 1926); *Wheelock v. Walsh Fire Clay Products Co.*, 60 F.2d 415 (8th Circuit 1932); *Updike Grain Co. v. Chicago & N.W. Ry. Co.*, 35 F.2d 486 (8th Circuit 1929); *Chicago, R. I. & P. R. Co. v. Furniture Forwarders of St. . . .*, 267 F.Supp. 175 (D.C. Mo. 1967).

The change in IEEE standards renders the prior state action exemption partially inapplicable to the interconnection provisions of this rule. In order to adopt the latest applicable IEEE interconnection standard, it will be necessary to either revise 4 CSR 240-20.065, or require all of the regulated electric utilities to revise their tariffs to specifically identify compliance with IEEE 1547 as a criterion for approval of customer interconnection of a distributed generation source. Compliance tariffs reviewed, authorized and implemented by action of the Commission would be the most expedient way to implement the new IEEE 1547 standard. The Commission also concludes that the other electrical standards in the Clean Energy Act, and the 100 kW systems restrictions encompassed in the Commission's current Net Metering Rule, do not conflict with the new IEEE 1547 Standard.

Decision

The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

The Commission will close Case Numbers EO-2006-0493 and EO-2006-0496, finding that the prior state action exemption applies and that no further action is required by the Commission with relation to those two matters. The Commission will order all regulated electric utilities to revise their tariffs to specifically identify compliance with the IEEE 1547

standard as a criterion for approval of customer interconnection of a distributed generation source. These tariffs shall be filed in Case No. EO-2006-0497 and once it is determined that the tariffs are in compliance with this order, EO-2006-0497 shall be closed, finding that the Commission has exercised its discretionary authority to fully adopt the standard pursuant to PURPA Sections 111(a)-(c).

IT IS ORDERED THAT:

1. Case Number EO-2006-0493, In the Matter of the Consideration of Adoption of the PURPA Section 111(d)(11) Net Metering Standard as Required by Section 1251 of the Energy Policy Act of 2005, is closed.

2. Case Number EO-2006-0496, In the Matter of the Consideration of Adoption of the PURPA Section 111(d)(14) Time-Based Metering and Communications Standard as Required by Section 1252 of the Energy Policy Act of 2005, is closed.

3. No later than August 1, 2007, all Missouri Public Service Commission regulated electric utilities shall file with the Commission revised tariffs to specifically identify compliance with IEEE 1547 as a criterion for approval of customer interconnection of a distributed generation source. These tariffs shall be filed in Case Number EO-2006-0497, In the Matter of the Consideration of Adoption of the PURPA Section 111(d)(15) Interconnection Standard as Required by Section 1254 of the Energy Policy Act of 2005. Once it is determined that the tariffs are in compliance with this order Case Number EO-2006-0497 shall be closed.

4. This order shall become effective on July 22, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray and Appling, CC., concur;
Gaw and Clayton, CC., dissent;
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of July, 2007.