

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

STAFF’S RESPONSE AND MOTION FOR LEAVE TO LATE-FILE

Comes now the Staff of the Missouri Public Service Commission (“Staff”) through the Office of the Staff Counsel of the Missouri Public Service Commission (“Commission”) and in response to Ordered paragraph 2. of the Commission’s August 3, 2009 *Order Granting Motion For Extension Of Time* and Ordered paragraph 5. of the Commission’s May 6, 2009 *Order Consolidating Workshops, Consolidating Cases and Correcting File Captioning*, requests leave to late-file this pleading and states:

1. In Ordered paragraph 4. of its May 6, 2009 *Order Consolidating Workshops, Consolidating Cases and Correcting File Captioning* the Commission stated:

The workshops for files numbers EW-2009-0290, EW-2009-0291, and EW-2009-0292 shall be consolidated with the current workshops schedules for the review of the Commission’s Integrated Resource Planning Rules. The current schedule for

those workshops consists of three, two-day workshops: May 18-19, 2009; June 29-30, 2009, and a final session shall be schedule for late July or Early August of 2009,

and in Ordered paragraph 5., the Commission directed,

No later than July 31, 2009, the Staff of the Missouri Public Service Commission shall file a report describing the progress of the workshops and a recommendation as to whether any of the PURPA files should be addressed in workshop settings separate from the Integrated Resource Planning Rules Workshops.

2. In Ordered paragraph 2. of the Commission's August 3, 2009 *Order Granting Motion For Extension Of Time*, the Commission authorized the Staff to file its report describing the progress of the workshops and a recommendation as to whether any of the Public Utility Regulatory Policies Act ("PURPA") files should be addressed in workshop settings separate from the Integrated Resource Planning Rules¹ Workshops no later than September 17, 2009. The final workshop session for the Commission's Chapter 22 Electric Resource Planning Rules referenced in Ordered paragraph 4. to be held in late July or early August of 2009 was originally scheduled for July 30 and 31, 2009. After the workshop held on June 29 and 30, 2009, the Staff changed the format for the July 30 and 31, 2009 workshop in the hope of facilitating a more robust exchange of ideas before preparing the next draft of the proposed revision of the Chapter 22 Rules to be discussed at the two-day workshop, which was tentatively rescheduled from July 30 and 31, 2009 to September 14 and 15, 2009. Participants / stakeholders were invited to make presentations at the workshop to be held July 30 and 31, 2009 in the hope that this approach would assist communications and make the process as open and transparent as possible.

¹ The Staff believes it is more accurate to refer to the Chapter 22 Rules as electric resource planning rules rather than integrated resource planning rules, but the general vernacular that has been adopted by those appearing before the Commission is the latter.

3. On the very first day of the July 30 and 31, 2009 workshop, it became clear to the Staff that it would be advisable to obtain direction from the Commissioners on the revision of the Chapter 22 Rules, and that a public meeting entailing presentations to the Commissioners might afford the interested entities an opportunity to present their positions to the Commissioners and for the Commissioners to ask questions.

4. The Staff placed the Chapter 22 Rules revision matter on the Commission's August 12, 2009 Agenda under "Other Discussion," as a discussion item in open session, and the Staff made its recommendation that a public meeting should be scheduled for August 31, 2009.

5. On August 14, 2009, the Commission issued in File No. EW-2009-0412 a Notice Of Public Meeting To Hear Presentations Regarding IRP Rule Revisions.

6. At the public meeting on August 31, 2009 presentations were made by (a) the 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.

7. At Agenda Sessions on 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.

8. Due to the aforementioned events, the Staff does not believe that it would serve any purpose for it to ask for a further continuance to sometime after the next Chapter 22 Rules workshop, which is now scheduled for October 19 and 20, 2009, to submit the Staff response previously directed by the Commission.

9. Given the aforementioned events,² the Staff still believes that 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). But the Staff would note that there are matters covered by EISA, such as cost recovery and rate design, that the Staff believes are required to be addressed in, or are best left to, specific rate cases of the separate electric utilities. Also, the Staff distinguishes the Senate Bill 376 (“SB 376”) requirements, which everyone is aware have become law, from the EISA / PURPA Section 111(d)(16), (17), (18), and (19) items that the Commission must consider. Section 393.1124.1 of SB 376 states that this section shall be known as the “Missouri Energy Efficiency Investment Act.” The Missouri Energy Efficiency Investment Act, not EISA, requires a rulemaking(s) for energy efficiency matters separate from the revision of the Commission’s Chapter 22 Electric Resource Planning Rules.

10. The Staff notes for the Commission’s convenience the provisions of Section 393.1124 requiring a rulemaking(s). One provision of SB 376 states that the Commission may adopt rules:

Section 393.1124.11:

The commission shall provide oversight and **may adopt rules** and procedures and approve corporation-specific settlements and tariff provisions, independent evaluation of demand-side programs, as necessary, to ensure that electric corporations can achieve the goals of this section. . . .

² The Commission itself has recently sponsored two public programs which should not be forgotten when considering the Commission’s activities constituting compliance with the new PURPA Section 111(d)(16), (17), (18), and (19) standards. The Commission held on June 22, 2009 and August 24, 2009 programs on the State Of The Electric Industry.

(Emphasis supplied). But there are other provisions of SB 376 which state that the Commission shall adopt rules:

Section 393.1124.2(6):

“Total resource cost test”, a test that compares the sum of avoided utility costs and avoided probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program, **as defined by the commission in rules.**

Section 393.1124.5:

. . . Prior to approving a rate design modification associated with demand-side cost recovery, the commission shall conclude a docket studying the effects thereof and **promulgate an appropriate rule.**

Section 393.1124.8:

Customers that have notified the electrical corporation that they do not wish to participate in demand-side programs under this section shall not subsequently be eligible to participate in demand-side programs except under **guidelines established by the commission in rulemaking.**

Section 393.1124.9:

Customers who participate in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for **a period of time to be established by the commission in rulemaking.**

Section 393.1124.14(2):

As a condition of participation in any demand-side program offered by an electrical corporation under this section when such program offers a monetary incentive to the customer, the **commission shall develop rules** that require documentation to be provided by the customer to the electrical corporation to show that the customer has not received a tax credit listed in subdivision (1) of this subsection.

Section 393.1124.15:

The **commission shall develop rules** that 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. . . .

(Emphasis supplied).

11. The Staff takes this opportunity to highlight a distinction between Missouri law and PURPA Section 111(d)(16). PURPA Section 111(d)(16) states, in part, that “[e]ach electric utility shall . . . (B) adopt policies establishing cost-effective energy efficiency as a priority resource.” Section 393.1124.3 of SB 376 does not state that it is the policy of the state to establish cost-effective energy efficiency as a priority resource. Section 393.1124.3 states, in part:

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 demand-side programs. . . .

(Emphasis supplied). Furthermore, it can be argued that Section 393.1040 of the Renewable Energy Standard, Senate Bill 54, Missouri Laws 2007 indicates that the Missouri Legislature, even when given the opportunity prior to SB 376, did not adopt as a state policy the establishment of cost-effective energy efficiency as a priority resource for investor-owned electric utilities operating in Missouri. Section 393.1040 states as follows:

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.

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. Neither PURPA nor EISA mandate that the Commission adopt PURPA Sections 111(d)(16), (17), (18), or (19). A state utility commission only need give consideration to these standards (PURPA Section 111(a)), and only need do so if there has not been prior state action (PURPA Section 112(a) and (d)).³

³ Under PURPA Section 112(d), prior state action can include action by the state’s legislature.

12. Undersigned Staff counsel apologizes for any inconvenience the delay in filing this pleading has caused or may cause. The delay in filing this pleading is due to the volume and urgency of other Commission business.

Wherefore, the Staff moves the Commission to accept this late-filed response as its “report describing the progress of the workshops and a recommendation as to whether any of the PURPA files should be addressed in workshop settings separate from the Integrated Resource Planning Rules Workshops.”

Respectfully submitted,

/s/ Steven Dottheim

Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7489 (Voice)
(573) 751-9285 (Fax)
e-mail: steve.dottheim@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record and individuals and entities on the Staff’s electronic mail list of interested individuals and entities this 22nd day of September 2009.

/s/ Steven Dottheim