

**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.)

**ORDER GRANTING MOTION FOR AN EXTENSION OF TIME AND
DIRECTING PROPER FILE CAPTIONING**

Issue Date: March 9, 2009

Effective Date: March 9, 2009

On February 23, 2009, the Commission's Staff filed a suggested procedural schedule for the above-captioned workshops. The Commission set March 10, 2009 as the deadline for responses.

On March 9, 2009, the Missouri Department of Natural Resources ("DNR") requested an extension of time to file its response. DNR asserts that the press of other business has prevented it from responding by March 10, 2009. DNR requests an extension

until March 13, 2009, states no other party is opposed and that after consultation with other participants it believes it is appropriate to extend the response deadline for of all the participants in these workshops. The Commission finds the request to be reasonable and shall extend the date for responses until March 13, 2009.

Additionally, because of issues that have continuously arisen regarding the proper classification of matters pending before the Commission, the Commission has adopted a policy of having all matters before it being captioned as a "File No." as opposed to a "Case No." Assigning a number to a docket entry, or to a filing or pleading, is a purely ministerial act,¹ indeed, "[a] court, [and an administrative agency], must have some mechanism to track [proceedings] for administrative purposes."² The numbering of matters before the Commission does not, in any way, determine the classification or character of that matter, i.e. contested case, non-contested case, investigation, workshop or rulemaking. Ultimately the character of the matter before the Commission, and the procedural formalities that ensue, are directed by statute, regulation and case law.

¹ "A ministerial act is "one which a public officer is required to perform upon a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed." *State ex rel. Killingsworth v. George*, 168 S.W.3d 621, 623 (Mo. App. 2005); *State ex rel. Morris Bldg. & Inv. Co. v. Brown*, 72 S.W.2d 859, 862 (Mo. App. 1934), citing to, *State ex rel. v. Meier*, 143 Mo. 439, 447, 448, 45 S. W. 306, 308; *State ex rel. v. Cook*, 174 Mo. 100, 118, 119, 120, 73 S. W. 489. In contrast, "[a] discretionary act is one requiring the exercise of reason in determining how or whether the act should be done." *Id.* "There is no question but that ministerial, as distinguished from judicial, acts may be performed by the clerk." *Id.* See also 11 C. J. pp. 886, 887; *Carter v. Louisiana Purchase Exposition Co.*, loc. cit. 537, 538 of 124 Mo. App., 102 S. W. 6; *Cabanne v. Spaulding*, 14 Mo. App. 312, 313, 314; *Norton v. Griffin*, 221 Mo. App. 834, 837, 286 S. W. 144; *Huff v. Shepard*, 58 Mo. 242, 245; *State ex rel. v. Sheppard*, 192 Mo. 497, 513, 514, 91 S. W. 477. Whether a certain act is ministerial or judicial depends upon the nature and character of the act itself and upon the things necessarily involved therein rather than upon what the applicant may claim for the act. *State ex rel. Howe v. Hughes*, 123 S.W.2d 105, 111 - 112 (Mo. 1938). Ministerial acts include the power to make records and transcripts of proceedings, and the certification of the transcripts. *State ex rel. Morris Bldg. & Inv. Co. v. Brown*, 72 S.W.2d 859, 862 (Mo. App. 1934).

THE COMMISSION ORDERS THAT:

1. Any responses to the Staff of the Missouri Public Service Commission's proposed procedural schedules for the above-captioned workshops shall be filed no later than March 13, 2009.

2. From this date forward, all pleadings and documents submitted to the Commission's Electronic Information and Filing System for filing pursuant to EW-2009-0290, EW-2009-0291, EW-2009-0292 and EW-2009-0293 shall be appropriately captioned by use of the words "File No."

3. This order shall become effective immediately upon issue.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Senior Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 9th day of March, 2009.

² *State ex rel. Stickelber v. Nixon*, 54 S.W.3d 219, 223 (Mo. App. 2001).