

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

In the Matter of the Consideration of)	
Adoption of the PURPA §111(d)(12) Fuel)	
Sources Standard as Required by §1251)	Case No. EO-2006-0494
Of the Energy Policy Act of 2005)	

**THE RESPONSE OF THE EMPIRE DISTRICT ELECTRIC
COMPANY TO STAFF'S SUGGESTIONS REGARDING
FUTURE PROCEEDINGS**

The Empire District Electric Company ("Empire" or "Company"), through its undersigned counsel, hereby submits the following response to the *Suggestions Regarding Future Proceedings* filed by the Staff ("Staff") of the Missouri Public Service Commission ("Commission") on September 29, 2006. In that filing, Staff made the following proposals regarding this case and the fuel sources standard in 16 U.S.C. § 2621(d)(12) that is under consideration herein:

- That a rulemaking docket should be opened by January 1, 2007, for the purpose of considering revisions to Chapter 22, "Electric Utility Resources Planning," of the Commission's rules; and
- That the current case should be held open pending a decision by the Commission in the proposed ratemaking docket as to whether any changes to Chapter 22 should be adopted.

1. Background of the Federal Fuel Sources Standard

When Congress enacted the "Energy Policy Act of 2005" ("EPAAct 2005"), it included provisions that required each state utility regulatory authority to consider several standards related to electric energy and to determine if any or all of the standards should be adopted for electric utilities over which the regulatory authority has jurisdiction.

(a) Consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. . . . 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.

16 U.S.C. § 2621(a).

The Commission's obligations to consider and determine each of the standards enacted by Congress as part of EPOA 2005 is set out in 16 U.S.C.

§2621(c):

(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) to be appropriate to carry out the purposes of this title, 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) . . . such authority or nonregulated electric utility shall state in writing the reasons therefore.

The language quoted above shows that although Congress required each state to consider the federal standards, it did not require each state to adopt those standards. For regulated electric utilities, that decision is left to the discretion of the utility regulatory authority in each state.

Among the standards adopted in EPOA 2005 was one pertaining to "fuel sources," which the statute describes as follows:

Fuel sources. Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

16 U.S.C. § 2621(d)(12). The language of this section evidences Congress' intent to require electric utilities to develop plans to reduce their dependence on a single fuel source to assure that the electricity the utilities sell to their customers comes from as diverse a range of fuel sources and technologies as is practicable.

2. Fuel Source Planning in Missouri

The Commission has had in effect for many years rules that require each Missouri electric utility to analyze and identify a variety of supply-side fuel and generation resources. Each utility's obligation is stated in 4 CSR-240-22.040(1):

(1) The analysis of supply-side resources shall begin with the identification of a variety of potential supply-side resource options which the utility can reasonably expect to develop and implement solely through its own resources or for which it will be a major participant. These options include new plants using existing generation technologies; new plants using new generation technologies; life extension and refurbishment at existing generating plants; enhancement of the emission controls at existing or new generating plants; purchased power from utility sources, cogenerators or independent power producers; efficiency improvements which reduce the utility's own use of energy; and upgrading of the transmission and distribution systems to reduce power and energy losses. . . .

Although the excerpt quoted above does not specifically include the phrase "fuel source" in describing the options that utilities are required to consider, Empire believes the breadth of the language used in the rule and the intent that the rule embodies – to assure a comprehensive review of all viable supply-side options – implicitly include a requirement to evaluate multiple fuel sources.

3. Further Action Suggested by Staff

Staff proposes that the Commission open a rulemaking proceeding to consider possible changes to Chapter 22 of the Commission's rules and also that the current case remain open pending completion of the rulemaking docket. Empire believes that neither of these actions is required by EAct 2005 or is desirable.

Because the Commission has already adopted rules that require Missouri electric utilities to continually consider and evaluate a wide range of supply-side options, Empire believes there is no need for another rulemaking proceeding to address the same issue. Under the "prior state action" provisions of EAct 2005, the Commission need not take any further or additional action regarding the federal fuel sources standard if, prior to the enactment of the statute in August 2005:

- (1) the State has implemented for such [electric] utility the standard concerned (or a comparable standard);
- (2) the State regulatory authority for such State . . . has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard); or
- (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.¹

Empire believes that the Commission's rule governing supply-side resource analysis qualifies under these provisions. The Commission, therefore, is free to declare that, because a comparable fuel sources standard already exists in

¹ 16 U.S.C. § 2622(d).

Missouri, no further action is necessary regarding the federal standard in EPAct 2005.

Some parties to this case have claimed that the Integrated Resource Planning process in Missouri, which includes the supply-side resource analysis requirements described earlier, does not satisfy the federal fuel sources standard. But the evidence they cite in support of their claim actually refutes it. The *Department of Natural Resources' Response to Questions Posed in the August 17, 2006, Commission Order*, includes a table that summarizes the fuel sources used by Missouri electric utilities to produce electricity using in-state generating facilities. That list shows that a variety of fuel sources – including coal, nuclear, natural gas, hydro, tire-derived fuel, petroleum coke, and fossil-derived gasses – are already being used.

The following table shows the mix of fuels that Empire employs in its own generating facilities and how that mix changed between 1990 and 2005.

Generation by Fuel Type

2005 MWh			1990 MWh		
Coal	2,278,706	57.5%	Coal	2,235,971	95.6%
Pet Coke	145,909	3.7%	Pet Coke	0	0.0%
Nat Gas	1,431,017	36.1%	Nat Gas	37,878	1.6%
Oil	26,982	0.7%	Oil	4,406	0.2%
Hydro	65,581	1.7%	Hydro	59,551	2.5%
Tires	<u>17,311</u>	<u>0.4%</u>	Tires	<u>0</u>	<u>0.0%</u>
	3,965,506	100.0%		2,337,806	100.0%

As can be seen from this table, in 1990 Empire's total generation was 1.6% from natural gas fired units even though those units represented 41.1% of the Company's total generation capacity. In 2005, natural gas accounted for

36.1% of total generation while gas generation units comprised 63.9% of total generation capacity. The table also shows how the mix of fuels that Empire employs has increased significantly from 1990 to 2005. In addition, Empire is also purchasing power from a wind farm in Kansas, which represents yet another “fuel” source. Under the Commission’s existing rules, Missouri utilities not only have developed plans to minimize their dependence on a single fuel source they are already using multiple fuel sources in their demand-side portfolios. This proves that not only is Missouri already satisfying the federal standard, it has gone one step beyond that standard.

WHEREFORE, for the reasons stated above, Empire strongly urges the Commission to: 1) reject the Staff’s suggestion that a rulemaking docket be opened for the purpose of considering changes to Chapter 22 of the Commission’s rules; and 2) reject Staff’s suggestion that this case be held open pending completion of the aforementioned rulemaking docket. Instead, the Commission should terminate the current case, pursuant to the authority granted by 16 U.S.C. §§ 2621(a) and 2622(d), by issuing an order declaring that a comparable standard already exists in Missouri and that no further action regarding the federal standard is, therefore, warranted.

Respectfully submitted,



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Certificate of Service

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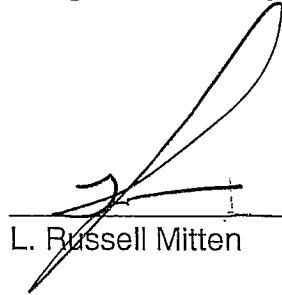
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