

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

In the Matter of the Consideration of Adoption)
of the PURPA Section 111(d)(15) Interconnection)
Standard as Required by Section 1251 of the) Case No. EO-2006-0497
Energy Policy Act of 2005)

**THE RESPONSE OF THE EMPIRE DISTRICT ELECTRIC COMPANY TO
STAFF'S MOTION TO OPEN RULEMAKING DOCKET**

The Empire District Electric Company ("Empire" or "Company"), through its undersigned counsel, hereby submits the following response in opposition to the *Motion to Open Rulemaking Docket* ("Motion") filed by the Staff ("Staff") of the Missouri Public Service Commission ("Commission") on October 31, 2006. In that filing, Staff proposed that the Commission open a single rulemaking docket to address any and all rulemaking considerations related to Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0495, EO-2005-0496, and EO-2006-0497. Staff's Motion also requested that the Commission order parties and/or Staff to file, on or before April 30, 2007, either: 1) proposed rules that address two standards that were included in the "Energy Policy Act of 2005" ("EPAAct 2005") – time-based metering/communications and interconnection – that are currently under consideration in Case Nos. EO-2006-0496 and EO-2006-0497, respectively; or 2) pleadings explaining why rulemaking is not required to bring the State of Missouri into compliance with those standards.

Empire opposes Staff's motion because the Company believes no rulemaking is necessary to bring the State of Missouri's interconnection standard into compliance with the federal standard, which was enacted as part of EPAAct

2005 and was codified as 16 U.S.C §2621(d)(15). Missouri's interconnection standard, which comprises both Section 386.887, RSMo, and 4 CSR 240 20.065, is sufficiently comparable to the federal standard that the Commission can determine, as a matter of law, that no further action is required to bring Missouri into compliance with EAct 2005.

In addition, Empire believes that Staff's proposal to open a single rulemaking docket to consider the interconnection standard that is the subject of this case as well as the federal standards under consideration in Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0495, and EO-2006-0496 would prove unwieldy for both the Commission and any parties who may choose to participate in such a docket.

Background of the Federal Interconnection Standard

1. EAct 2005 includes provisions that require 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. The statutory language that imposes this requirement is as follows:

(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).

2. What the Commission must do to fulfill these obligations 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.

3. Taken together, the two statutes quoted above show that, although each state is required to *consider* the federal standards, Congress did not require each state to *adopt* those standards. For regulated electric utilities, the decision to adopt or decline to adopt the federal standards is left to the discretion of the utility regulatory authority in each state.

4. Among the standards adopted in EPAct 2005 was one pertaining to "interconnection," which the statute describes as follows:

Interconnection. 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.

16 U.S.C. § 2621(d)(15).

5. The language of this section reflects Congress' desire to accomplish two objectives: 1) to make interconnection service available under agreements that are just, reasonable, and not unduly discriminatory; and 2) to assure that contracts and procedures for interconnection services reflect best practices for distributed generation, including a requirement that interconnection services be provided in a manner that complies with IEEE Standard 1547. In response to a motion filed by Staff, the Commission opened the current case to consider the federal net metering standard and decide if it should be adopted in Missouri.

Interconnection in Missouri

6. Interconnection in Missouri is governed both by statute, Section 386.877, RSMo, and by Commission rule, CSR 240-20.065. The statute and the rule set out the requirements and procedures for interconnection between retail electric suppliers, including all electric utilities, and customer-generators. The rule even prescribes a form of interconnection agreement to be used between the retail electric supplier and the customer-generator. Empire currently offers interconnection services within its serving area and does so in full compliance with all requirements of Section 386.877, RSMo, and the Commission's interconnection rule.

**Further Action Regarding Net Metering That is Required to Bring Missouri
Into Compliance with the Federal Standard**

7. Whether IEEE Standard 1547 should be adopted as part of Missouri's interconnection standard is a question that the Commission, in its discretion, can answer either affirmatively or negatively. Although the use of the word "shall" in 16 U.S.C. § 2621(d)(15), which describes the federal interconnection standard, suggests that the Commission is required to adopt the IEEE standard, subsection (c) of the statute states that the Commission is free to "decline to implement any such standard."¹ So the Commission is free to determine that IEEE Standard 1547 should not be part of the Missouri interconnection standard and terminate this case without any further proceedings. If, however, the Commission decides that further consideration of IEEE Standard 1547 is warranted, Empire believes that a rulemaking proceeding should be opened for that limited purpose alone.

WHEREFORE, for the reasons stated above, Empire urges the Commission to reject Staff's suggestion that a rulemaking docket be opened to address any and all rulemaking considerations related to the interconnection standard that is the subject of the current case as well as the other federal energy standards that are the subjects of Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0495, and EO-2006-0496. If a rulemaking docket is to be opened, it should be limited to the question of whether 4 CSR 240-20.065 should be amended to mandate compliance with IEEE Standard 1547.

¹ 16 U.S.C. § 2621(c)(1)(B).

Respectfully submitted,



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Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing document was served upon the following by electronic mail, facsimile or U.S. mail, postage prepaid, this 10th day of November, 2006:

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