

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. EO-2009-0247**
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. EO-2009-0248**
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) **Case No. EO-2009-0249**
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) **Case No. EO-2009-0250**
1307 of the Energy Independence and Security)
Act of 2007.)

ORDER DIRECTING THE COMMISSION'S STAFF TO SHOW CAUSE AS TO WHY THE ABOVE CAPTIONED CASES SHOULD NOT BE RE- CLASSIFIED AS WORKSHOP CASES

Issue Date: December 22, 2008

Effective Date: December 22, 2008

On December 17, 2008, the Commission granted its Staff's motions requesting that the Commission establish cases for these matters. Staff's requests designated these cases with the letters "EO", implying they are contested cases. However, these matters appear to be workshop cases, opened to determine whether a rulemaking proceeding is required.

The Missouri Administrative Procedures Act defines a contested case as “a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.”¹ Determination of contested cases involves the Commission’s exercise of its adjudicative power, applying existing rules and regulations to past facts. Workshop cases do not constitute contested cases, even if they result in a determination that the Commission will engage in rulemaking. Rulemaking is an exercise of the Commission’s legislative power, making new rules applying to future events.²

In contrast to an adjudicatory, trial-type contested case hearings, workshop and rulemaking procedures contemplate that the Commission will meet interested members of the public face to face providing an opportunity for oral presentation and comment without the formality of trial procedures.³ Consequently, the Commission’s *ex parte* contact rules do not apply to these matters.

The Commission has a separate case designation of “W” for workshop cases. The “O” classification is reserved for cases that lack any other Commission designation. Consequently, the Commission shall direct its Staff to show cause as to why these cases should not be re-classified as “EW” as opposed to “EO” cases.

THE COMMISSION ORDERS THAT:

1. No later than January 5, 2009, the Commission’s Staff shall show cause as to why the designation of EO in case numbers EO-2009-0247, EO-2009-0248, EO-2009-

¹ Section 536.010(2).

² “The identifying badge of a modern administrative agency is the combination of judicial power (adjudication) with legislative power (rulemaking).” *McNeil-Terry v. Roling*, 142 S.W.3d 828, 835 (Mo. App. 2004).

³ *State ex rel. Atmos Energy Corp. v. Public Service Com’n of State*, 103 S.W.3d 753, 759-760 (Mo. banc 2003).

0249, and EO-2009-0250 should not be re-classified as "EW", the classification for workshop cases.

2. This order shall become effective immediately upon issue.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

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 22nd day of December, 2008.