

**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)(18 ¹) 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)(19) Smart Grid)	
Information Standard as Required by Section)	File No. EW-2009-0293
1307 of the Energy Independence and Security)	
Act of 2007.)	

UNION ELECTRIC COMPANY d/b/a AMERENUE'S
REPLY TO THE STAFF'S RESPONSE TO ORDER
ESTABLISHING DEADLINE FOR RESPONSES

COMES NOW Union Electric Company d/b/a AmerenUE (Company or AmerenUE), by and through counsel and, pursuant to 4 CSR 240-2.080(15), hereby replies to the Staff's Response to Order Establishing Deadline for Responses. In this regard, AmerenUE states as follows:

1. On March 25, 2009, the Commission issued its Order Establishing Deadline for Responses and solicited the parties to address, by April 15, 2009, two specific questions posed in

¹ As noted in AmerenUE's March 13 Reply, the original legislation contained numbering errors that Congress has since corrected. Thus, the caption for File No. EW-2009-0292 should be changed to reflect that it deals with PURPA Section 111(d)(18), not 111(d)(16).

that Order, as follows: (a) does the prior state action exemption apply to any of the new PURPA standards encompassed within the Energy Independence and Security Act of 2007; and (b) should the Commission engage in rulemaking, or some other procedure to adopt any of the new PURPA standards encompassed within the Energy Independence and Security Act of 2007?²

2. AmerenUE timely filed its Response to that Order, with that Response in part directing the Commission to AmerenUE's March 13, 2009 Reply to Staff's Response to Order Setting Date for Filing Procedural Schedules, which answers both of the questions posed by the Commission's March 25 Order.³

3. On April 20, 2009, after asking for and receiving an extension of the April 15 deadline, the Staff filed its Response to the Commission's March 25 Order and also took that opportunity to attempt to rebut some of the arguments made by AmerenUE in its March 13 Reply. Staff also attempted to rebut some of the arguments made by the Missouri Department of Natural Resources (DNR) in DNR's March 13 Response. Kansas City Power & Light Company (KCP&L) also filed a response to the Commission's March 25 Order, but the Staff did not address KCP&L's response.

4. The Staff's April 18 Response offers little if any additional justification to support Staff's prior contention that both of the energy efficiency-related standards contained in EISA Section 532 qualify, in the Staff's view, for the "prior state action" exemption.

Integrated Resource Planning Standard

5. With respect to the standard in **PURPA Section 111(d)(16)** (the integrated resource planning standard) the Staff contends that the adoption 15 years ago of a provision in

² Hereinafter referred to as the "EISA," which was amended in 2009 by the American Recovery and Reinvestment Act of 2009 (hereinafter, "ARRA").

³ Because AmerenUE addressed these questions in its March 13 Reply, it will not repeat that discussion here and, instead, respectfully asks the Commission to review and consider its earlier Reply and the analysis of these very questions contained therein in connection with its review of this Reply.

the existing IRP rules that reflects a policy of *equivalent* treatment of demand- and supply-side resources amounts to prior consideration of an EISA standard that requires *priority* treatment of energy efficiency resources. Note, however, that the Staff does not allege that the Commission has *ever* considered the question of whether priority treatment should be given to energy efficiency resources. Rather, the most the Staff does is to state the obvious: that the Commission “gave consideration [to] and actually adopted an Integrated Resource Planning Standard when it adopted Chapter 22” To that AmerenUE states “of course it did,” but considering *an* IRP standard says nothing about whether *priority treatment of energy efficiency resources* was considered 15-plus years ago or indeed at any prior time. There is in fact no evidence that such consideration has ever been given, which means that the prior state action exemption simply does not apply.

6. Also noteworthy is the fact that the Staff entirely ignored that giving consideration to priority treatment of energy efficiency resources at this time would provide the requisite “appropriate proceeding” to support a notification by Governor Nixon under the ARRP necessary to qualify the State for the energy efficiency grants made possible by that Act, as discussed at ¶¶ 10 and 11 of AmerenUE’s March 13 Reply.

7. In summary, AmerenUE, KCP&L and DNR all agree and have demonstrated that this PURPA standard has not been considered, that the prior state action exemption does not apply, and that this standard should be considered in connection with the upcoming docket respecting a rewrite of the IRP rules.⁴

Rate Design to Promote Energy Efficiency

8. With respect to the standard in **PURPA Section 111(d)(17)** (rate design modifications to promote energy efficiency) the Staff states that it “believes” the Commission

⁴ AmerenUE addressed these issues in detail at ¶¶ 5 through 11 of its March 13 Reply.

has given previous consideration to this standard. In stating its “belief,” the Staff concedes that “it may not be possible to implement some rate designs within a Chapter 22 compliance filing case” and further concedes that Chapter 22 “does not explicitly prescribe nontraditional cost recovery of energy efficiency program costs.” Staff then suggests that because a utility can “request” what the Staff calls “nontraditional ratemaking treatment” this somehow amounts to prior consideration of this standard.

9. The Staff misstates the IRP rules. It is true that 4 CSR 240-22.080(2) allows a utility to request “nontraditional *accounting procedures*” for demand-side resources (emphasis added). There is no provision for requesting nontraditional *ratemaking treatment*, and there is no assurance as to how those items may or may not be treated *in a rate case*. Thus the Staff misstates, and arguably overstates, the import of the existing IRP rules on this issue.

10. This PURPA standard mandates that the state regulatory authority consider six specific policy options and *mandates* that rates must align utility incentives with the delivery of cost-effective energy efficiency and promote energy efficiency investments. Consequently, adoption of this standard would require *ratemaking assurance*, but that kind of assurance has simply not been considered before as evidenced by the fact that it is simply not reflected in the existing IRP rules.⁵

11. We state again: the existing IRP rules do not address cost recovery, and they do not address performance incentives – at all. There is no evidence that the Commission has given previous consideration to the six specific policy objectives in this standard or to whether rates must align utility incentives with the delivery of cost-effective energy efficiency and promote energy efficiency investments. As such, the prior state action exemption does not apply, despite

⁵ KCP&L agrees that there has not been prior consideration of this standard either.

Staff's unsupported contrary "belief."⁶ Consequently, this PURPA standard should be considered in connection with the upcoming docket respecting a rewrite of the IRP rules.

12. Moreover, consideration of this PURPA standard now will also promote access to the energy efficiency grants available under the ARRA, as noted earlier.

Smart Grid Standards

13. As addressed in earlier pleadings, AmerenUE, the Staff and DNR all agree that the smart grid investments and smart grid information standards have not been previously considered. Both AmerenUE and DNR agree that the smart grid information standard (111(d)(19)) should not be considered in connection with the upcoming rewrite of the IRP rules. DNR goes along with the Staff's suggestion to consider the smart grid investments standard (111(d)(18)⁷) in connection with the upcoming IRP rules rewrite.

14. AmerenUE again respectfully submits that both of the smart grid-related standards should be considered in a single smart grid docket separate and apart from the upcoming IRP rules rewrite. AmerenUE cogently explains why these smart grid standards do not fall within the IRP planning process at ¶¶ 21 and 25 of its March 13 Reply. The smart grid investment and information standards are too important to be rolled into the more general, overall IRP rule rewrite efforts, and should be given the consideration they deserve: consideration in a separate, consolidated smart grid standard docket (by consolidating File Nos. EW-2009-0292 and EW-2009-0293).

⁶ AmerenUE addressed these issues in detail at ¶¶ 12 through 17 of its March 13 Reply

⁷ Renumbered by Congress, as noted in FN. 1, *supra*.

WHEREFORE, AmerenUE hereby submits this Reply, and renews its prayer for relief as reflected in its March 13, 2009 Reply.

Dated: April 28, 2009

Respectfully submitted:
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply was served via e-mail on the following parties on the 28th day of April, 2009.

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