



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY  
65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

September 15, 2006

FILED

SEP 15 2006

Public Service Commission  
Governor Hotel  
200 Madison Street  
Jefferson City, MO 65102

Missouri Public  
Service Commission

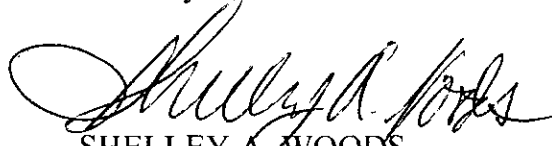
RE: *In the Matter of the Consideration of Adoption of the PURPA Sections  
Case Nos. EO-2006-0495; EO-2006-0494; EO-2006-0493; and EO-2006-0497*

Dear Sir/Madam:

Enclosed for filing please find an original and 9 copies of Missouri Department of Natural Resources' Responses to Questions Posed in the August 17, 2006, Commission Order in the four cases listed above. Please stamp "filed" on the extra copy for my files. Thank you.

Sincerely,

JEREMIAH W. (JAY) NIXON  
Attorney General

  
SHELLEY A. WOODS  
Assistant Attorney General

SAW:mg  
Enclosure  
c: Counsel of Record

**STATE OF MISSOURI**  
**PUBLIC SERVICE COMMISSION**

In the Matter of the Consideration of Adoption   )  
of the PURPA Section 111(d)(13) Fossil Fuel   )  
Generation Efficiency Standard as Required by   )   Case No. EO-2006-0495  
Section 1251 of the Energy Policy Act of 2005   )

**DEPARTMENT OF NATURAL RESOURCES' RESPONSES TO QUESTIONS**  
**POSED IN THE AUGUST 17, 2006, COMMISSION ORDER**

**1. Can this case be closed based on "prior state actions" as provided in Section 1251 (b)(3) of the Act, 16 U.S.C. 2622(d), and why or why not?**

The Department does not recommend the Fossil Fuel Generation Efficiency Standard docket be closed based on prior state actions because of a significant difference in this standard and the Commission's Electric Utility Resource Planning Rule, 4 CSR 240-22.040(1).

The Fossil Fuel Generation Efficiency Standard in EAct states "Each electric utility shall develop and **implement** a 10-year plan to increase the efficiency of its fossil fuel generation." 16 U.S.C. § 2621(d)(13). (Emphasis supplied.)

Prior to the amendments enacted by the EAct, the Public Utility Regulatory Policy Act of 1978 (PURPA) contained a standard for integrated resource planning that requires plans to be implemented: "[e]ach electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for

public participation and comment, **and contain a requirement that the plan be implemented.**" 16 U.S.C. § 2621(d)(7). (Emphasis supplied.)

Missouri's resource planning rule does address fossil fuel generation efficiency and provides that:

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.

4CSR 240-22.040(1)

However, the EPAct standard requires **implementation** of the plan to increase the efficiency of fossil fuel generation. Missouri's resource planning rule does not provide authority for the Commission to require implementation of a utility's plan; it only requires electric utilities to demonstrate compliance with the planning process detailed in the rule.

The Purpose Section on the rule provides:

4 CSR 240-22.080 Filing Schedule and Requirements

PURPOSE: This rule specifies the requirements for electric utility filings to demonstrate compliance with the provisions of this chapter of rules. The purpose of the compliance review required by this chapter of rules is not commission approval of the substantive findings, determinations or analyses contained in the filing. The purpose of the compliance review required by this chapter is to determine whether the utility's resource acquisition strategy meets the requirements stated in 4 CSR 240-22.010(2)(A) - (C).

And 4 CSR 240-22.080(13) provides simply that:

The commission will issue an order which contains findings that the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter of rules...."

Thus the current Commission Integrated Resource Planning rule does not authorize the Commission to direct the utility to implement the resource plan developed by the utility and submitted to the Commission, which is something less than what the EPAct amendments to PURPA envision.

**2. Can this case be consolidated with any, some or all of the following cases -- EO-2006-0493, EO-2006-0494, EO-2006-0496 and EO-2006-0497 -- because the issues addressed in one or more of these cases are similar, and why or why not?**

The Commission may address this case in the same docket as EO-2006-0494, "Fuel Sources." Both of these topics are covered in the Commission's Electric Utility Resource Planning Rule, 4 CSR 240-22.010 through 240-22.080).

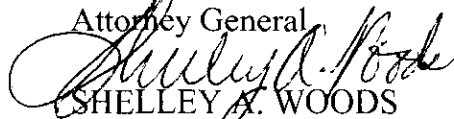
3. What type of proceeding (e.g., rulemaking, rate case implementation, etc.) should the Commission use to address the issues in this case in order to meet the Public Utility Regulatory Policies Act of 1978 ("PURPA") Section 111(a) and 111(b) "consideration and determination" requirements [16 U.S.C. 2621(a), 2621(b)], and why?

The Department suggests that the Fossil Fuel Generation Efficiency Standard and Fuel Sources Standard be considered together and a recommendation made as to whether Missouri should adopt the new standards in a rulemaking proceeding to revise the Commission's Electric Resource Planning Rule.

WHEREFORE, the Department of Natural Resources submits its responses to the Commission's list of questions posed in its August 17, 2006, Order.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON,  
Attorney General



SHELLEY A. WOODS  
Assistant Attorney General  
MBE #33525

P. O. Box 899  
Jefferson City, MO 65102  
Telephone (573) 751-8795  
TELEFAX No. (573) 751-8464  
[shelley.woods@ago.mo.gov](mailto:shelley.woods@ago.mo.gov)

Attorneys for Missouri Department of Natural  
Resources

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by mailing a copy thereof, via U.S. Mail, this 15<sup>th</sup> day of April, 2006, to:

Steve Dottheim  
Chief Deputy General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Lewis R. Mills, Jr.  
Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102

Thomas Byrne  
Ameren UE  
1901 Chouteau Avenue  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 63166-6149

Kathleen Henry  
Henry Robertson  
Great Rivers Law Center  
705 Olive Street, Suite 614  
St. Louis, MO 63101

Diana Vuysteke  
Bryan Cave  
211 North Broadway, Suite 3600  
St. Louis, MO 63102

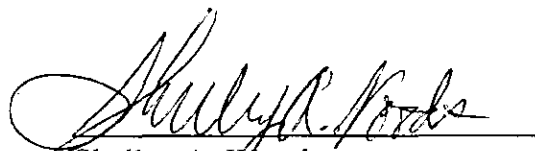
Dennis Frey  
Senior Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

James Lowery  
David Kurtz  
111 South Ninth Street, Suite 200  
P.O. Box 918  
Columbia, MO 65202-0918

Russell Mitten  
Brydon Swearengen  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102

Curtis Blanc  
KCPL  
1201 Walnut, 20<sup>th</sup> Floor  
Kansas City, MO 64106

David Woodsmall  
428 East Capitol Avenue, Suite 300  
Jefferson City, MO 65102

  
Shelley A. Woods  
Assistant Attorney General