

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

In the Matter of the Consideration of Adoption)	
of the PURPA §111(d)(14) Time-Based)	
Metering and Communications Standard as)	Case No. EO-2006-0496
Required by §1252 of the Energy Policy Act of)	
2005.)	

STAFF’S RESPONSE TO COMMISSION’S DECEMBER 26, 2006 ORDER

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and respectfully states as follows:

1. A threshold question in this proceeding is whether or not, under the Energy Policy Act of 2005 (“EPAct 2005”), prior state action exempts the Commission from having to consider and determine whether to adopt the Time-Based Metering and Communications Standard, which was added to the Public Utility Regulatory Policies Act of 1978 (“PURPA”) standards by EPAct 2005. If the Commission decides that the prior state action exemption applies, under the federal law, it need not pursue the matter any further. Instead, the Commission may simply issue an order to that effect and close the case.

2. On December 26, 2006, the Commission issued an Order directing any party wishing to file an additional pleading on the applicability of the prior state action exemption to the Time-Based Metering and Communications Standard, to do so by February 9, 2007. An analogous order was issued in each of the other four cases ---Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0495 and EO-2006-0497---established to address the other newly created PURPA standards.

3. The exemption language is set forth in 16 USC §2622(e), which provides: “Prior State Actions – Subsections (b) and (c) of this section shall not apply to the standard established

by paragraph (14) of section 2621(d) of this title in the case of any electric utility in a State if, before the enactment of this subsection-

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous 3 years; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility within the previous 3 years.”

4. 16 U.S.C. §2621(d)(14) describes the Time-Based Metering and Communications

Standard as follows:

TIME-BASED METERING AND COMMUNICATIONS – (A) . . . [E]ach electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility’s costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others--

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of

generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

5. All four of Missouri's regulated utilities currently have tariffed seasonal rates, which are consistent with the description of time-of-use pricing described in (B)(i) above. In addition, other rates reflecting the other types of services also exist to an extent that varies among the utilities. Given the existence of seasonal rates for all utilities, it could be argued in a narrow technical sense that prior state action already exists and that the exemption should apply. However, the Staff believes that a Commission finding, on this basis, that the exemption applies would not be consistent with the spirit of the standard, which specifically states that, "The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology." Seasonal rates do not make use of advanced metering and communications technology.

6. The Staff would note that if the Commission agrees that the prior state action exemption is inapplicable, the federal statute requires it to determine whether to adopt the Time-Based Metering and Communications Standard by August 8, 2007.

WHEREFORE, the Staff respectfully recommends that the Commission determine that the prior state action exemption of EAct 2005 does not apply to the Time-Based Metering and Communications Standard, and order the parties to file within 30 days their recommendations with respect to moving forward with the development of an appropriate standard.

Respectfully submitted,

/s/ Dennis L. Frey

Dennis L. Frey
Senior Counsel
Missouri Bar No. 44697
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-8700 (telephone)
573-751-9285 (fax)
e-mail: denny.frey@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed by first-class mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 9th day of February 2007.

/s/ Dennis L. Frey