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Missouri Public Service Commission

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of April, 1993.

In the matter of the investigation of the )  
Section 111 standards of the Energy Policy )  
Act of 1992. )

CASE NO. EO-93-222

ORDER APPROVING STIPULATION AND AGREEMENT

On January 19, 1993, the Commission issued an order establishing this docket to address matters raised by Section 111 of the Energy Policy Act of 1992 (EPACT) as it relates to the Commission's recently enacted Integrated Resource Planning Rules, 4 CSR 240-22.010, et seq., as enacted in Case Nos. EX-92-299 and OX-92-300. EPACT amends Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) to require the Commission to consider the following three standards, i.e., (7) Integrated Resource Planning, (8) Investments In Conservation And Demand Management, and (9) Energy Efficiency Investments In Power Generation And Supply; determine whether or not it is appropriate to implement such standards; and consider the impact of implementation of such standards on small businesses engaged in demand-side management activities to assure that utilities do not have an unfair competitive advantage. On February 26, 1993 and March 10, 1993, the Commission issued Orders allowing intervention of all requesting parties. A prehearing conference was held in this matter on March 16, 1993 which resulted in the filing of a motion requesting the Commission allow a certain amount of time for the parties to reach agreement or file a suggested procedural schedule, which motion was granted by the Commission on March 24, 1993. As a result, this proposed Stipulation and Agreement was filed on April 1, 1993.

Section 111 of the EPACT states in pertinent part:

"(a)...(7) INTEGRATED RESOURCE PLANNING.--Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet

Staff Exhibit No. 1  
Case No(s) EO-2004-0494-8 EO-2000-0495  
Date 4-27-07 Rptr JMB

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.

(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT.--The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.

(9) ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY.--The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment."

The proposed Stipulation and Agreement, attached hereto as Attachment A and incorporated herein by reference, sets out the following matters to which all parties in this proceeding have agreed.

It is agreed that, in the context of Case Nos. EX-92-299 and OX-92-300, the Commission has considered and implemented, at least in part, new standard #7, by initiating a series of new rules requiring that a resource acquisition strategy must be created, formally approved, and periodically updated by each of the five regulated electric utilities in this state. The resource acquisition strategy is also subject to public comment and participation after filing with the Commission.

It is further agreed by the parties that the Commission, also in the context of EX-92-299 and OX-92-300, has considered and implemented, at least in

part, new standard #8, in that the Commission's rules now provide that the above compliance filing may include a request by the utility for nontraditional accounting procedures and information regarding any associated ratemaking treatment regarding demand-side resource costs.

Finally, it was agreed by the parties that the Commission has considered and implemented, at least in part, new standard #9. The parties agree that, in the context of Case Nos. EX-92-299 and OX-92-300, each electric utility is to identify for analysis and consideration a host of supply-side resource options to reduce power loss, analyze generation technologies, transmission and distribution facilities, extend life and refurbish existing facilities, all in an effort to avoid significant cost disadvantages and improve cost-effectiveness. In addition, the parties agreed that nothing in the rules could be found that would place small businesses at a disadvantage and, in fact, argue that application of the rules will likely have a positive impact on such small businesses as the result of the emphasis on placing demand-side resource planning on equal footing with supply-side planning.

It was also noted and agreed to by the parties that ample opportunity has been given by the Commission in the formulation of the Integrated Resource Planning Rules for intervention by any interested party including small businesses, and no complaint was received by the Commission regarding the rules providing any unfair competitive advantage over small businesses. In addition, the opportunity will be given for small businesses to intervene in each utility's compliance filing under the rules, allowing a showing by the small businesses of some deficiency in the utility's filing.

Regarding the PURPA, Section 111(b) requirement that consideration of these standards be made after public notice and evidentiary hearing, the parties note the language of the "joint explanatory statement of the committee of conference" regarding EPACT which states that the conferees do not intend that

the states go through additional rulemaking proceedings simply to satisfy the procedural requirement of holding a public hearing. As all parties agreed in this matter, all interested parties were given the opportunity to intervene, and no request for a public hearing was or is forthcoming, the Commission finds that no public hearing is necessary in this matter.

The Commission has reviewed the Stipulation and Agreement in this matter in light of the compliance requirements of EPACT and finds the Stipulation and Agreement to be reasonable. The Commission, for the reasons as set out above, finds that the Integrated Resource Planning Rules, 4 CSR 240-20.010 et seq., are in substantial compliance with the requirements regarding consideration of the pertinent parts of EPACT and the amended sections of PURPA. The Commission will therefore approve the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed in this matter on April 1, 1993, incorporated herein by reference and attached hereto as Attachment A, be hereby approved.

2. That, in accordance with the attached Stipulation and Agreement, appropriate consideration and compliance has been achieved with the pertinent parts of the Energy Policy Act of 1992, and amended Section 111 of the Public Utility Regulatory Policy Act of 1978 by way of enactment by the Commission of 4 CSR 240-22.010 et seq., known as the Integrated Resource Planning Rules.

3. That this Order shall become effective on the 20th day of April,  
1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,  
and Kincheloe, CC., Concur.  
Perkins, C., Absent.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the )  
Investigation of the Section )  
111 Standards of the Energy )  
Policy Act of 1992. )

Case No. EO-93-222

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STIPULATION AND AGREEMENTMISSOURI  
PUBLIC SERVICE COMMISSION

Come now the parties to the instant proceeding and hereby submit this Stipulation And Agreement in settlement of all the issues believed to be raised by the establishment of this docket by the Missouri Public Service Commission (Commission). In support thereof the parties state as follows:

1. On January 19, 1993 the Commission issued an Order Establishing A Docket, thereby creating Case No. EO-93-222. Said docket was established to address the matters raised by Section 111 of the Energy Policy Act of 1992 (EPACT). Said section amends Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) to require that the Commission consider the three standards "(7) INTEGRATED RESOURCE PLANNING", "(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT", and "(9) ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY"; determine whether or not it is appropriate to implement such standards; and if the Commission implements either the "(7) INTEGRATED RESOURCE PLANNING" or "(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT" standard, the Commission shall consider the impact the implementation of such standard would have on small businesses

engaged in activities respecting demand-side management measures, and shall assure that utilities not have an unfair competitive advantage over such small businesses.

2. The Commission's Order Establishing A Docket notes that Section 112(a) of PURPA provides that in considering and making the determinations concerning the Section 111(d) PURPA standards, the Commission may take into account any appropriate prior determination with respect to such standards which was made in a proceeding after November 9, 1978; and the Joint Explanatory Statement Of The Committee Of Conference concerning EPACT states regarding standards (7), (8), and (9):

...The Conferees recognize that a number of States have already implemented some or all of the standards encouraged under this section. The Conferees do not intend that such States go through additional rulemaking proceedings simply to satisfy the procedural requirement above, nor do they intend that States repeat such proceedings in the future. These States are encouraged to demonstrate that they have implemented the standards by referencing actions they have already taken. States have substantial discretion in how they implement the standards encouraged under this section.

It is the intent of this subtitle to promote energy efficiency, in particular by encouraging utilities, which have a unique relationship with their customers, to expand demand-side management (DSM) programs. It is also intended that utility commissions must consider the impact which these expanded DSM programs may have on small businesses already engaged in similar activities, and shall implement these standards so as to assure that utility actions will not provide utilities with unfair competitive advantages over such small businesses. It is further intended that whenever practicable and consistent with

energy efficiency goals, utility commissions will encourage approaches to the implementation of DSM activities that would be mutually beneficial to utilities and small businesses, such as through joint utility-small business arrangements using rebates or vouchers.

The subsection dealing with small business protection neither precludes, nor mandates, the adoption of competitive bidding for demand-side management services. By adding this provision, the Conferees do not intend that utilities be precluded from engaging in energy conservation, energy efficiency or other demand-side measures.

3. Official notice shall be taken of the record in Case No. EX-92-299 regarding proposed Commission rules 4 CSR 240-22.010 through 22.080 and Case No. OX-92-300 regarding proposed amendments to Commission rules 4 CSR 240-14.010 through 14.040 and proposed rescission of Commission rule 4 CSR 240-14.050. The record in said cases, include, among other things, the Notice of Proposed Rulemaking at 17 MoReg 886 (July 1, 1992), the Notice of Proposed Rescission at 17 MoReg 888 (July 1, 1992), the Notice of Proposed Rulemaking at 17 MoReg 889 (July 1, 1992), the Order of Rulemaking at 18 MoReg 79 (January 4, 1993), the Order of Rulemaking at 18 MoReg 80 (January 4, 1993), and the Code of State Regulations Update Service (March 29, 1993).

4. The Commission has considered and determined in the context of Case Nos. EX-92-299 and OX-92-300 whether or not it is appropriate to implement standards (7), (8), and (9) of Section 111(d) of PURPA.

5. The Commission, in the context of Case Nos. EX-92-299 and OX-92-300, has determined to implement, at least in part, new standard (7). The Commission's electric utility resource planning rules apply to electric utilities under its jurisdiction which sold more than one (1) million megawatt-hours to Missouri retail electric customers in calendar year 1991. The rules require that the resource acquisition strategy of each affected utility must be updated on a regular basis (every three (3) years), and must be officially approved by the utility. The resource acquisition strategy of each affected utility is subject to public participation and comment after being filed with the Commission. (4 CSR 240-22.080).

Regarding new standard (8), one or more parties assert that the Commission in the context of Case Nos. EX-92-299 and OX-92-300 determined to implement at least in part new standard (8). 4 CSR 240-22.080(2) provides that the electric utility's compliance filing may include a request for nontraditional accounting procedures and information regarding any associated ratemaking treatment to be sought by the utility for demand-side resource costs. The Commission's Order Of Rulemaking states regarding advance approval of resource acquisition strategies that:

. . . serious statutory and precedential issues exist as to the commission's authority to engage in what may be termed single-issue ratemaking, the preallocation of costs and the granting of a presumption of prudent action by utility management. . . .

18 MoReg at 84.

. . . The commission does not believe that it is either appropriate or arguably even lawful for it to engage in ratemaking in a rulemaking proceeding. . . . These matters should more appropriately be dealt with in a non-rulemaking proceeding. Although the commission may authorize a utility to take the specific action for which the utility has requested commission authorization, it has been the general approach or policy of the commission to decline to make a ratemaking determination outside the context of a rate case. . . .

18 MoReg at 93.

Finally, respecting new standard (9), which is not covered by Section 111(b) of EPCRA, i.e., the protection for small business section, the Commission, in the context of Case Nos. EX-92-299 and OX-92-300, has determined to implement, at least in part, new standard (9). 4 CSR 240-22.040 provides that among the supply-side resource options which the affected utility is to identify for supply-side analysis are 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. Those supply-side resource options that have significant disadvantages in terms of utility costs, environmental costs, operational efficiency, risk reduction or planning flexibility, as compared to other available options, are to be eliminated from further

consideration. Opportunities for life extension and refurbishment of existing generation are to be identified and analyzed. The feasibility and cost-effectiveness of transmission and distribution system loss reduction measures are to be analyzed as a supply-side resource.

6. No small business engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand side management measures, or organization/association of such small businesses, submitted comments or reply comments, or appeared at the hearing in Case Nos. EX-92-299 and OX-93-299. No such small business or organization/association of such small businesses filed an application for intervention in the instant proceeding.

7. The parties are not aware of anything in 4 CSR 240-22.010 - 22.080, as proposed or promulgated by the Commission, or 4 CSR 240-14.010 - 14.040, as amended by the Commission, and 4 CSR 240-14.050, as rescinded by the Commission, that would place the electrical corporations covered by these rules at an unfair competitive advantage over such small businesses. In fact, it may even be argued that the Commission's promulgation of electric utility resource planning rules and amendment of its promotional practices rules will likely have a positive impact on such small businesses. For example, the electric utility resource planning rules require that each affected utility consider and analyze demand-side efficiency and energy management measures on an equivalent basis with supply-side alternatives in the resource

planning process. (4 CSR 240-22.010(2)(A)). The amended promotional practices rules state that nothing contained in this chapter of rules should be construed to prohibit the provision of consideration that may be necessary to acquire cost-effective demand-side resources. (4 CSR 240-14.010(5)).

8. The parties are not aware of any such small business having complained either to them or to the Commission that the proposed or adopted electric utility resource planning rules or the amendments to the promotional practices rules provide affected electric utilities with unfair competitive advantages over such small businesses.

9. Should a small business engaged in activities respecting demand-side management measures believe that the relevant utility has an unfair competitive advantage, said small business may seek to intervene in the docket wherein the utility's compliance filing is received by the Commission. The small business may file a report or comments that identifies deficiencies in the electric utility's compliance with the provisions of 4 CSR 240-22.010 - 22.080, deficiencies in the methodologies or analyses required to be performed by 4 CSR 240-22.010 - 22.080, and deficiencies which would cause the utility's resource acquisition strategy to fail to meet the requirements of 4 CSR 240-22.010(2)(A)-(C).

10. Regarding the PURPA Section 111(b) requirement that consideration of the standards be made after public notice and evidentiary hearing, the parties note the language of the aforementioned Conference Report which states that the Conferees do

not intend that the States go through additional rulemaking proceedings simply to satisfy the procedural requirement of holding a public hearing.

The parties would also note State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Serv. Comm'n, 776 S.W.2d 494 (Mo.App. 1989). Deffenderfer Enterprises, Inc. concerned an application for a certificate of convenience and necessity under Section 393.170.3 RSMo to construct and operate a water system in an unincorporated section of Christian County Missouri, altering the boundaries of an existing certificate possessed by the applicant. The Commission granted the application without hearing. The Western District Court of Appeals determined that the phrase "due hearing" as contained in Section 393.170.3 was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence. Finding that there were no adverse parties under the circumstances of the case, the Court affirmed the Commission's decision to not hold a hearing.

11. None of the parties to this Stipulation And Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, ratemaking principle, valuation methodology, cost of service methodology or determination, rate design methodology, cost allocation, cost recovery, or prudence, that may underlie this Stipulation And Agreement, or for which provision is made in this Stipulation And Agreement.

12. The Staff shall have the right to submit to the Commission, in memorandum form, an explanation of its rationale for

entering into this Stipulation And Agreement and to provide to the Commission whatever further explanation the Commission requests. Such memorandum shall not become a part of the record of this proceeding and shall not bind or prejudice the Staff in any future proceeding or in this proceeding in the event the Commission does not approve the Stipulation And Agreement. It is understood by the signatories hereto that any rationales advanced by the Staff in such a memorandum are its own and are not acquiesced in or otherwise adopted by any party hereto.

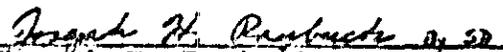
13. This Stipulation And Agreement represents a negotiated settlement for the sole purpose of addressing Section 111 of EPACT. Except as specified herein, the parties to this Stipulation And Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation And Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve the instant Stipulation And Agreement in the instant proceeding, or in any way condition its approval of same.

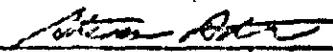
14. The provisions of this Stipulation And Agreement have resulted from extensive negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation And Agreement in total, it shall be void and no party hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof unless otherwise provided herein.

15. In the event the Commission accepts the specific terms of this Stipulation And Agreement, the signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1986; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1986. This waiver applies only to a Commission Report And Order issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation And Agreement.

WHEREFORE the parties agree that the Commission has met the requirements of Sections 111(a) and (b) of the Energy Policy Act of 1992 and request that the Commission issue an Order so finding, which references the actions set out hereinabove.

Respectfully submitted,

  
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