

**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)(16) 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. ¹)	

In the Matter of the Consideration of Adoption)	
of the PURPA Section 111(d)(17) Smart Grid)	
Information Standard as Required by Section)	File No. EW-2009-0293
1307 of the Energy Independence and Security)	
Act of 2007. ¹)	

**STAFF MOTION FOR LEAVE TO RESPOND
TO AMERENUE'S APRIL 28, 2009 REPLY AND STAFF RESPONSE**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and submits its Motion For Leave To Respond To AmerenUE's April 28, 2009 Reply And Staff Response. Staff realizes that there should be a limit to the number of rounds of responses to pleadings and requests leave to file a short response to some assertions made by

¹ This Motion And Response follows the Commission's March 18, 2009 *Notice Regarding Proper File Captioning*. Staff did take note of AmerenUE's reference to Congress's correction to the misnumbering of the original legislation. While duly noted, Staff wishes to maintain consistency with the Commission's caption designations. Nonetheless, the renumbering is as AmerenUE indicates in the captions on the first page of its March 13, 2009 Reply. Smart Grid Investments Standard is PURPA Section 111(d)(18) and Smart Grid Information Standard is PURPA Section 111(d)(19).

Union Electric Company, d/b/a AmerenUE (AmerenUE) in its recent, April 28, 2009, Reply To The Staff's Response To Order Establishing Deadline For Responses respecting Case No. EX-92-299. The record in Case No. EX-92-299, In the Matter of the Proposed Commission Rules 4 CSR 240-22.010 -.080, is extensive. There were initial and reply comment periods and a hearing. The demands of other Commission cases have only permitted Staff to identify the excerpts below from the Commission's Order Of Rulemaking published in the January 4, 1993 *Missouri Register*. So this Staff response does not include excerpts from any of the initial comments, any of the reply comments, or the transcript from the hearing in Case No. EX-92-299.

File No. EW-2009-0290: PURPA Section 111(d)(16) Integrated Resource Planning Standard as Required by Section 532 EISA

1. AmerenUE states at page 3 of its April 28, 2009 Reply respecting PURPA Section 111(d)(16) Integrated Resource Planning Standard, File No. EW-2009-0290, that "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 prior state action exemption simply does not apply."

2. The Commission's *Order Of Rulemaking* respecting 4 CSR 240-22.010-.080, in Case No. EX-92-299, published in Volume 18, Number 1 of the *Missouri Register*, January 4, 1993, pages 80-98 proves that AmerenUE's statements are in error. The Commission included in its "SUMMARY OF GENERAL COMMENTS, INCLUDING TESTIMONY" at 18 *Missouri Register* 1, page 83, January 4, 1993, the following information:

. . . OPC recommended additional language stating that the purpose of the required review would be to determine whether the utility's resource acquisition strategy provided the public with **energy services that are safe, reliable and**

efficient at just and reasonable rates in a manner that serves the public interest. . .

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* * *
. . . the LWV [League of Women Voters] offered support for the inclusion of fuel substitution as a mandatory demand-side measure in order to insure all potential cost-effective energy resources are considered in the utility process. Additionally the LWV agreed that fuel substitution as a demand-side measure should be waived until the regulations are also imposed on competitors. The LWV stated that to obtain a thorough analysis of environmental costs the rules should include societal and environmental costs resulting from unregulated, uncontrolled or partially controlled pollutants and other external costs of power production which have not been internalized. . . . **Utility investment in energy efficiency should be made at least as profitable as utility investment in new generating capacity, and incentives for successful implementation of least-cost plans should be tied to performance.**

. . . MoPIRG [Missouri Public Interest Research Group] proposed that four and one-half percent of each utility's gross annual revenue be provided solely as financing for demand-side **energy efficiency** and renewable energy programs. . . . MoPIRG also supported fuel substitution as a demand-side resource and additionally suggested that cost minimization should be the primary goal of the process. . . .

The final commenter was the DNR which considered the Proposed Rules as a good first step toward **energy efficiency**.

Emphasis added. The Commission included in its "COMMENTS CONCERNING 4 CSR 240-22.010," at 18 *Missouri Register* 1, page 85, January 4, 1993, the following information:

KCPL believed that the total resource cost test is most appropriate because it measures the total cost including participant contributions for demand-side resources. UE expressed concerns over identifying the primary criterion as minimizing utility costs and believed that equal consideration should be given to all criteria, for example, minimizing rates, minimizing costs, minimizing environmental impact, maximizing reliability and flexibility.

* * *
The OPC, LWV and MoPIRG believed that the public interest is best served by minimizing the cost for energy services. This bill reduction approach is most closely approximated by minimizing long-run utility costs. They argued that using rate minimization is not in the public interest because it biases against demand-side resources. Most demand-side resources do not pass the rate minimization test, and though rates will decline, the average bill (and total amount of money paid to the utilities) will be higher.

File No. EW-2009-0291: PURPA Section 111(d)(17) Rate Design Modifications to Promote Energy Efficiency Investments Standard as Required by EISA Section 532

3. AmerenUE states at pages 4-5 of its April 28, 2009 Reply respecting PURPA Section 111(d)(17) Rate Design Modifications to Promote Energy Efficiency Investments Standard, File No. EW-2009-0291, that “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 Staff’s unsupported contrary ‘belief.’” (Footnote omitted).

4. The Commission’s *Order Of Rulemaking* respecting 4 CSR 240-22.010-.080, in Case No. EX-92-299, published in Volume 18, Number 1 of the *Missouri Register*, January 4, 1993, pages 80-98 proves that AmerenUE’s statements are in error. The Commission included in its “SUMMARY OF GENERAL COMMENTS, INCLUDING TESTIMONY” at 18 *Missouri Register* 1, pages 81-82, January 4, 1993, the following information:

. . . UE agreed that this type of preapproval might not carry with it the guarantee of **cost recovery** from the ratepayer. In general, UE maintained that a process in which plan preapproval does not exist is unfairly one-sided against the utility. UE stated that mere focus on the process, but not the prudence, of a utility’s resource plan is unfair in that the utility has to devote substantial time and effort in compliance without gaining any assurance that compliance with the prescribed planning methods will result in **cost recovery**. In this regard, UE also supported adoption by the commission of nontraditional accounting procedures for the **recovery of the costs** of demand-side resources. . . .

. . . MPS asserted that its main concerns are that the Proposed Rules be less prescriptive and more flexible, provide specific **cost recovery** methods for demand-side programs, and in order that management prudence be addressed, include preapproval of the utility’s resource acquisition strategy. . . . The rules should specify a demand-side management **cost recovery mechanism that will**

provide assurance that program costs, lost revenues and incentives can be recovered in future rates.

* * * *

. . . KCPL argued that, without commission approval, the utility takes all the risk without being assured of compensating benefits. KCPL continued that shareholder interests are omitted from the Proposed Rules. KCPL said this could be remedied by plan preapproval and equal treatment of demand-side and supply-side resources, which KCPL stated the Proposed Rules lack. KCPL felt that the rules should ensure the equivalency of demand-side and supply-side resources by providing **adequate cost recovery**. . . . KCPL urged the commission to be careful of incentives, and to opt for **performance based systems**, whether in demand-side management or supply-side management. . . .

SJLP stated that, during the informal process leading up to the proposal of these rules, many of its comments were taken into consideration. . . . The rules also should provide utilities the **opportunity to recover lost revenues** associated with demand-side management programs. Furthermore, the commission should indicate in the rules the appropriate **recovery mechanism** for demand-side management costs.

. . . SJLP proposed a **rider or surcharge** be allowed to be added to bills in order to **recoup expenses immediately**. The **rider or surcharge** would be **trued-up at the utility's next general rate case**. . . .

. . . EDE is also concerned with the costs associated with implementation and demand-side programs and felt that **cost recovery** should be addressed directly in the rules. . . .

Emphasis added.

5. The Commission's *Order Of Rulemaking* respecting 4 CSR 240-22.010-.080, in Case No. EX-92-299, published in Volume 18, Number 1 of the *Missouri Register*, January 4, 1993, further proves at pages 92-93 that AmerenUE's statements are in error. The Commission included in its "4 CSR 240-22.080(2) SUMMARY OF COMMENT" at pages 92-93 an extensive discussion of UE's, KCPL's, MPS's, EDE's and SLJP's recommendations regarding demand-side management cost recovery. The Commission included a discussion of other participants' comments. The Commission stated as follows, in part, at page 93:

. . . The commission does not believe that it is either appropriate or arguably

even lawful for it to engage in ratemaking in a rulemaking proceeding. Thus, the commission declines to add any proposed language regarding “future rate recovery,” “prudently incurred costs,” “used and useful,” or “fully operational and used for service,” and deletes presently included language regarding “fixing rates” and “reasonable or prudent expenditures.” 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. . . .

Wherefore Staff submits its Motion For Leave To Respond To AmerenUE’s April 28, 2009 Reply To The Staff’s Response To Order Establishing Deadline For Responses And Staff Response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of May, 2009.

