

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

In the Matter of the Consideration of Adoption	)	
of the PURPA <b>Section 111(d)(16)</b> Integrated	)	
Resource Planning Standard as Required by	)	<b>File No. EW-2009-0290</b>
Section 532 of the Energy Independence and	)	
Security Act of 2007.	)	

In the Matter of the Consideration of Adoption	)	
of the PURPA <b>Section 111(d)(17)</b> Rate Design	)	
Modifications to Promote Energy Efficiency	)	<b>File No. EW-2009-0291</b>
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 <b>Section 111(d)(18)</b> Consideration	)	
of Smart Grid Investments Standard and PURPA	)	<b>File No. EW-2009-0292</b>
<b>Section 111(d)(19)</b> Smart Grid Information	)	
Standard as Required by Section 1307 of the	)	
Energy Independence and Security Act of 2007.	)	

**STAFF’S REPLY TO OCTOBER 26, 2009 FILINGS OF  
UNION ELECTRIC COMPANY d/b/a AMERENUE AND  
MISSOURI DEPARTMENT OF NATURAL RESOURCES**

Comes now the Staff of the Missouri Public Service Commission (“Staff”) through the Office of the Staff Counsel of the Missouri Public Service Commission (“Commission”) and files its reply to (a) the Union Electric Company d/b/a AmerenUE’s Reply To The Staff’s September 22, 2009 Response and (b) the Response Of The Missouri Department Of Natural Resources To Staff’s Response To Order Setting Date For Filing Procedural Schedules And Request For Leave To Late-File, both filed on October 26, 2009. In support thereof, the Staff states as follows:

1. Respecting PURPA Section 111(d)(16) Integrated Resource Planning, the Commission should take a close look at how the Missouri Department of Natural Resources

(MDNR) consistently misuses language in its October 26, 2009 pleading. At page 5, paragraph 6 of its Response, MDNR states in part:

By virtue of SB 376, the Missouri Legislature has established a two-element demand-side energy management policy for this state: (1) implement all cost-effective demand-side programs per § 393.1124.4 RSMo; and (2) allow recovery of all reasonable and prudent costs of delivering those cost-effective demand-side resources equal to traditional investments in supply and delivery infrastructure per § 393.1124.3, RSMo. . . . Missouri’s demand-side energy management policy is to implement all cost effective demand-side programs. . . .

Section 393.1124.4 does not contain the language or requirement found by MDNR in “(1)” quoted above to “implement all cost-effective demand-side programs.” Rather Section 393.1124.4 states a “goal of achieving all cost effective demand-side savings.”

2. MDNR in “(2)” above moves language that is in Section 393.1124.3 around to avoid the clear meaning MDNR which does not like and in order to construct a meaning which MDNR can bear. The word “equal” in Section 393.1124.3 appears after the word “value,” and between the words “demand-side investments” and “traditional investments in supply and delivery infrastructure” in the phrase “value demand-side investments equal to traditional investments in supply and delivery infrastructure.” (Emphasis supplied). The word “equal” neither appears in, nor relates to, the phrase “allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.”

3. A further indication of MDNR’s tortured reading of statute is MDNR’s ignoring the language of PURPA Section 111(d)(17)(B)(iii) that each State regulatory authority shall consider (a) removing management disincentives to energy efficiency, and (b) providing utility incentives for successful management of energy efficiency programs, recognizing that one of the goals of retail rate design is to impact the adoption of energy efficiency, and energy efficiency must be balanced with other objectives:

(17) Rate Design Modifications To Promote Energy Efficiency Investments. –

(A) In General. . .

(B) Policy Options. - In complying with subparagraph (A), each State regulatory authority . . . shall consider –

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(iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;

4. At page 5, paragraph 6 of MDNR’s Response, MDNR also states in part:

. . . The very basic, fundamental concept of resource planning is to determine a realistic forecast of the energy load for the future and then determine how best to supply the projected energy needed to fulfill that forecasted load through both supply-side initiatives and demand-side initiatives. . . .

This statement of MDNR does not address the elemental matter of uncertainty. The most fundamental resource planning process is choosing demand-side and supply-side resources and determining when the resources should be implemented to meet all of the utility’s customers’ energy needs (amount and reliability) across a broad set of uncertain futures in a least cost, reliable and safe manner. MDNR also uses the term “initiatives” in the phrase “supply-side initiatives and demand-side initiatives.” The term “initiative” appeared in the “Green Power Initiative” legislation, Senate Bill 54. Although Sections 393.1020, 393.1025, 393.1030, and 393.1035 of the Green Power Initiative/Senate Bill 54 were repealed by Proposition C, Section 393.1040 of the Green Power Initiative/Senate Bill 54 was not. The word “initiatives” only appears in Section 393.1040:

In addition to the renewable energy objectives set forth in sections 393.1025, 393.1030, and 393.1035, it is also the policy of this state to encourage electrical corporations to develop and administer energy efficiency initiatives that reduce the annual growth in energy consumption and the need to build additional electric generation capacity.

5. At the bottom of page 5 carrying over to page 6, MDNR argues that:

. . . Missouri’s demand-side energy management policy is to implement all cost effective demand-side programs. . . . In other words, demand-side resources first and supply-side resources second. Demand-side resources must be the priority to adhere to the first element of Missouri’s established energy efficiency policy set out in §393.1124.4, RSMo. . . .

There is nothing in Senate Bill 376, in particular the “Missouri Energy Efficiency Investment Act,” Section 393.1124, stating or indicating “demand-side resources first and supply-side resources second.” In fact, the word “resources” does not appear in SB 376. The terms “investment,” “program,” “expenditures,” and “measures” are used, but not the term “resources.” The clear language of SB 376/Section 393.1124.3 is that “[i]t shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure. . .” The Staff believes that SB 376/Section 393.1124.3 requires that the most cost effective measure must be chosen to meet ratepayers’ needs of safe and adequate service, regardless of whether the measure is demand-side or supply-side. The current 4 CSR 240-22.010-.080 (Chapter 22) Electric Utility Resource Planning rules reflect this approach and the Staff has followed this approach in its proposed revisions to Chapter 22. Even MDNR’s approach does not remove all ratepayer and electric utility barriers to the implementation of demand-side measures.

6. Moreover, PURPA Section 111(d)(16) Integrated Resource Planning does not address electric utilities adopting policies establishing cost-effective energy efficiency as “the priority resource” of the electric utilities. (Emphasis supplied). PURPA Section 111(d)(16) Integrated Resource Planning addresses electric utilities adopting policies establishing cost-effective energy efficiency as “a priority resource” of the electric utilities. (Emphasis supplied). Thus, although the phrase “a priority resource” appears in PURPA Section 111(d)(16), the phrase “the priority resource” does not appear. (Emphasis supplied).

7. The Commission is required by the Energy Independence and Security Act of 2007 (EISA) and the Public Utility Regulatory Policies Act of 1978 (PURPA) to consider and make a determination whether it is appropriate to implement the standard to carry out the purposes of the Act. The Commission may determine that it is not appropriate to implement the standard pursuant to its authority under otherwise applicable state law. In general, under PURPA Section 112(d) – prior state action – the obligation to consider a particular new standard does not apply and no new consideration process is required if, prior to August 8, 2005: (i) the state implemented the standard (or a comparable standard) for electric utilities under the Commission’s jurisdiction, (ii) the Commission conducted a proceeding considering the implementation of the standard (or a comparable standard) for electric utilities under its jurisdiction, or (iii) the state’s legislature voted on implementation of the standard (or a comparable standard) for electric utilities under Commission’s jurisdiction.<sup>1</sup>

8. PURPA Section 111(d)(17) Rate Design Modifications To Promote Energy Efficiency Investments provides that, unless exempted by prior state action, the Commission is required to consider and determine whether to adopt the following:

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<sup>1</sup> See Technical Corrections in the American Recovery and Reinvestment Act of 2009 of the PURPA Section 111(d) (16)-(19) standards in EISA, Section 408(b) regarding prior state action:

SEC. 408. TECHNICAL CORRECTIONS TO PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978.

(a) Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by redesignating paragraph (16) relating to consideration of smart grid investments (added by section 1307(a) of Public Law 110–140) as paragraph (18) and by redesignating paragraph (17) relating to smart grid information (added by section 1308(a) of Public Law 110–140) as paragraph (19).

(b) Subsections (b) and (d) of section 112 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622) are each amended by striking “(17) through (18)” in each place it appears and inserting “(16) through (19).”

- (A) IN GENERAL - The rates allowed to be charged by any electric utility shall -
  - (i) align utility incentives with the delivery of cost-effective energy efficiency; and
  - (ii) promote energy efficiency investments.
- (B) POLICY OPTIONS – In complying with subparagraph (A), each State regulatory authority . . . shall consider --
  - (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
  - (ii) providing utility incentives for the successful management of energy efficiency programs;
  - (iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
  - (iv) adopting rate designs that encourage energy efficiency for each customer class;
  - (v) allowing timely recovery of energy efficiency-related costs; and
  - (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

This standard has been addressed previously by the existing provision in Chapter 22, 4CSR 240-22.080(2), regarding an electric utility being able to request nontraditional accounting procedures and include information in its compliance filing regarding any associated ratemaking treatment to be sought by it for demand-side resource costs:

(2) The electric utility's compliance filing may also 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. If the utility desires to make any such request, it must be made in the utility's compliance filing pursuant to this rule and not at some subsequent time. If the

utility desires to continue any previously authorized nontraditional accounting procedures beyond the three (3)-year implementation period, it must request reauthorization in each subsequent filing pursuant to this rule. . . .

In the Chapter 22 workshops, the Staff is attempting to achieve in the language that it has proposed regarding rate structures and the revision of 4 CSR 240-22.050, requiring the electric utilities to consider rate design alternatives as part of the demand-side analysis, the alignment of electric utility incentives with the delivery of cost-effective energy efficiency.

9. Regardless of the applicability of prior state action in Missouri to PURPA Section 111(d)(17), SB 376/Section 393.1124 is new and contains provisions specifying, among other things, that the Commission may or shall adopt certain rules. Also, whereas Kansas City Power & Light Company (Case No. EO-2005-0329) and The Empire District Electric Company (Case No. EO-2005-0263) have relevant Experimental Regulatory Plans in effect, Union Electric Company d/b/a AmerenUE has a rate increase case pending, Case No. ER-2010-0036, wherein it has testimony filed on energy efficiency/demand-side programs/demand-side program cost recovery. Empire also has testimony in its recently filed rate increase case, Case No. ER-2010-0130 on energy efficiency/demand-side management. Finally, it is anticipated that KCPL and KCP&L Greater Missouri Operations Company will soon also have rate increase cases filed with the Commission addressing such matters.

10. PURPA Section 111(d)(18) Consideration of Smart Grid Investments provides that, unless exempted by prior state action, the Commission is required to consider and determine whether to adopt the following:

- (A) IN GENERAL – Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including --

- (i) total costs;
  - (ii) cost-effectiveness;
  - (iii) improved reliability;
  - (iv) security;
  - (v) system performance; and
  - (vi) societal benefit.
- (B) RATE RECOVERY – Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.
- (C) OBSOLETE EQUIPMENT – Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

The Staff's thinking on the PURPA Section 111(d)(18) standard has changed in the context of the Chapter 22 workshops. The Staff's present view is that PURPA Section 111(d)(18)(A)(i) and (ii) can and should be addressed in the context of the revised Chapter 22 Electric Utility Resource Planning rules. The present draft of the revised Chapter 22 rules includes a requirement respecting a showing that advanced grid technologies are not cost-effective prior to the installation of non-advanced technologies.

11. The other provisions of PURPA Section 111(d)(18) would need to be considered in a rulemaking or some other forum. Actual rate recovery would seem to be required to be considered in electric utility specific rate case proceedings. It has occurred to undersigned Staff counsel that the Commission and participants may want to look at the Commission's Promulgation of 4 CSR 240-32.100 Provision Of Basic Local And Interexchange Telecommunications Service in 1992, and the subsequent Case No. TO-93-309, In the Matter of the Local Exchange Telecommunications Companies' Modernization Plans Pursuant to 4 CSR



240-32.100. The Staff would note that the present 4 CSR 240-32.100 is not the same that was originally adopted by the Commission in 1992.

12. PURPA Section 111(d)(19) Smart Grid Information provides that, unless exempted by prior state action, the Commission is required to consider and determine whether to adopt the following:

- (A) STANDARD. – All electricity purchasers shall be provided direct access, in written or machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).
- (B) INFORMATION. – Information provided under this section, to the extent practicable, shall include:
  - (i) PRICES. – Purchasers and other interested persons shall be provided with information on –
    - (I) time-based electricity prices in the wholesale electricity market; and
    - (II) time-based electricity retail prices or rates that are available to the purchasers.
  - (ii) USAGE. – Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.
  - (iii) INTERVALS AND PROJECTIONS – Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.
  - (iv) SOURCES – Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.
- (C) ACCESS – Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the

Internet. Information specific to any purchaser shall be provided solely to that purchaser.

At page 8, paragraph 8 of MDNR's Response, MDNR states that PURPA Section 111(d)(19)(B)(iv) has not been addressed in the Chapter 22 workshops and MDNR suggests that it be addressed in the Renewable Energy Standard (Proposition C) rulemaking. The Staff would suggest that should the Commission determine that the electric utilities should be required to provide this information, it could be required to be provided in the Annual Report filed by each electric utility each year by April 15. PURPA Section 111(d)(19)(B)(i)(II) information is already provided by each electric utility in its tariff, which is on file, on line, and is open to the public at the electric utility's offices. PURPA Section 111(d)(19)(B)(ii) information is provided in each ratepayer's bill from the electric utility. PURPA Section 111(d)(19)(B)(iii) information should be required if directed by the Commission when the Commission approves a rate design for which the information is necessary. PURPA Section 111(d)(19)(C) first sentence is a matter that might be best addressed in 4 CSR 240-Chapter 13 Service And Billing Practices For Residential Customers. The Staff is still in the process of attempting to determine the relevance of PURPA Section 111(d)(19)(B)(i)(I) and (C) second and third sentences.

13. Due to the demands of other Commission cases and matters and the inopportune event of November 10, 2009, undersigned counsel is not able to more directly address the October 26, 2009 pleading of AmerenUE given the time available. Silence should not be mistaken as acquiescence in any argument put forward by AmerenUE.

Wherefore the Staff files its reply to (a) the Union Electric Company d/b/a AmerenUE's Reply To The Staff's September 22, 2009 Response and (b) the Response Of The Missouri Department Of Natural Resources To Staff's Response To Order Setting Date For Filing Procedural Schedules And Request For Leave To Late-File, both filed on October 26, 2009.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record and individuals and entities on the Staff's electronic mail list of interested individuals and entities this 12th day of November 2009.

/s/ Steven Dottheim