

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

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

**Department of Natural Resources' Expert Witness John Noller's
Position Statement on Applicability of Prior State Action Exemption**

Premise:

I do not believe the prior state action exemption is applicable in this case for the following reasons. The Fossil Fuel Generation Efficiency Standard in the Energy Policy Act (EPAAct) requires electric utilities to develop and implement a 10-year plan to increase the efficiency of their fossil fuel generation. Missouri's resource planning rule, 4CSR 240-22-040(1), requires regulated utilities to analyze opportunities for fossil fuel generation efficiency during the course of their resource planning process, but does not require that the preferred resource plan or resource acquisition strategy adopted by the utility include activities to increase the efficiency of the utility's fossil fuel generating resources or that the plan be implemented. Missouri's resource planning rule does not clearly provide authority for the Commission to require implementation of a utility's filing; it only requires electric utilities to demonstrate compliance with the planning process detailed in the rule. Based on this significant difference, the Public Service Commission should conclude that 4 CSR 240-22.010-080 is not comparable to § 1251 of EPAAct, and, therefore, does not constitute a prior state action, under the terms of EPAAct.

Discussion:

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

Existing PURPA 1978 language codified in 16 U.S.C. 2621(d)(7) also contains a standard for integrated resource planning that requires plans to be implemented: "Each 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.**" (Emphasis Added)

Missouri's resource planning rule, 4CSR 240-22-040(1), does require regulated utilities to analyze opportunities for fossil fuel generation efficiency during the course of their resource planning process.

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.

However, nothing in Missouri's resource planning rule requires or guarantees that the preferred resource plan or resource acquisition strategy adopted by the utility will include activities to increase the efficiency of the utility's fossil fuel generating resources.

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

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)."

4 CSR 240-22.080 (13) --

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....

In summary, because Missouri's resource planning rule does not require inclusion or implementation of plans to increase the efficiency of electric utilities' fossil fuel generation plants, the Public Service Commission should conclude that 4 CSR 240-

22.010-080 is not comparable to § 1251 of EPAct, and, therefore, does not constitute a prior state action, under the terms of EPAct.