

**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) Fossil Fuel)
Generation Efficiency Standard as Required by)
Section 1251 of the Energy Policy Act of 2005)

Case No. EO-2006-0495

**THE RESPONSE OF THE EMPIRE DISTRICT ELECTRIC
COMPANY TO STAFF'S SUGGESTIONS REGARDING
FUTURE PROCEEDINGS**

The Empire District Electric Company ("Empire" or "Company"), through its undersigned counsel, hereby submits the following response to the *Suggestions Regarding Future Proceedings* filed by the Staff ("Staff") of the Missouri Public Service Commission ("Commission") on September 29, 2006. In that filing, Staff made the following proposals regarding this case and the fossil fuel generation efficiency standard in 16 U.S.C. § 2621(d)(13) that is under consideration herein:

- That a rulemaking docket should be opened by January 1, 2007, for the purpose of considering revisions to Chapter 22, "Electric Utility Resources Planning," of the Commission's rules; and
- That the current case should be held open pending a decision by the Commission in the proposed ratemaking docket as to whether any changes to Chapter 22 should be adopted.

1. Background of the Federal Fossil Fuel Generating Efficiency Standard

When Congress enacted the "Energy Policy Act of 2005" ("EPAAct 2005"), it included provisions that required each state utility regulatory authority to consider several standards related to electric energy and to determine if any or

all of the standards should be adopted for electric utilities over which the regulatory authority has jurisdiction.

(a) Consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. . . . Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

16 U.S.C. § 2621(a).

The Commission's obligations to consider and determine each of the standards enacted by Congress as part of EPAAct 2005 are set out in 16 U.S.C.

§2621(c):

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law:

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) . . . such authority or nonregulated electric utility shall state in writing the reasons therefore.

The language quoted above shows that although Congress required each state to consider the federal standards, it did not require each state to adopt those standards. For regulated electric utilities, that decision is left to the discretion of the utility regulatory authority in each state.

Among the standards adopted in EPAct 2005 was one pertaining to “fossil fuel generation efficiency,” which the statute describes as follows:

Fossil fuel generation efficiency. Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

16 U.S.C. § 2621(d)(13).

2. Fossil Fuel Efficiency Standards in Missouri

The Commission has had in effect for many years rules that require each Missouri electric utility to analyze a variety of supply-side fuel and generation resources. Each utility’s obligation is stated in 4 CSR-240-22.040(1):

(1) 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. . . .

The language quoted above already requires Missouri electric utilities to analyze and evaluate the efficiency of their generating plants as part of the Integrated Resource Planning (“IRP”) process. Among the options that the rule requires these companies to consider are “life extension and refurbishment at existing generating plants” and “efficiency improvements which reduce the utility’s own use of energy.” Although the IRP process does not require utilities to implement a plan to increase the efficiency of fossil fuel plants, it would be unreasonable to include such a requirement in light of the fundamental purpose of the supply-side

resource planning process. That purpose is stated in 4 CSR 240-22.010 as follows:

(1) The commission's policy goal in promulgating this chapter is to set minimum standards to govern the scope and objectives of the resource planning process that is required of electric utilities subject to its jurisdiction in order to ensure that the public interest is adequately served. ...

(2) *The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest. ... (emphasis added)*

It is possible that improving the efficiency of a fossil fuel generating facility may not be consistent with the objective of providing service that is "safe, reliable, and efficient, at just and reasonable rates." For example, if a fossil fuel generating facility were at or near the end of its economic life, it would not be reasonable to mandate that capital be expended to refurbish the facility in order to improve its efficiency. Yet that kind of inflexibility, which is inconsistent with the stated objectives of the Commission's IRP planning process, is what would occur if Chapter 22 of the Commission's rules were amended to require the development and implementation of a ten-year plan to improve fossil fuel efficiency.

The scheme that currently is in place – which requires Missouri electric utilities to consider refurbishment of existing facilities to achieve objectives that include improved efficiency but does not require them to take any particular action – is much superior to the mandatory scheme suggested by the federal standard. Changing Chapter 22 to require mandatory efficiency improvements would also require the Commission to change the fundamental objective of the

IRP rules. Such a change, however, is not in the best interests of Missouri's electric utilities or their customers.

3. Further Action Suggested by Staff

Staff proposes that the Commission open a rulemaking proceeding to consider possible changes to Chapter 22 of the Commission's rules and also that the current case remain open pending completion of the rulemaking docket. Empire believes that neither of those actions is required by EAct 2005 or is desirable.

Because the Commission has already adopted rules that require Missouri electric utilities to consider improving the fuel efficiency of existing generating facilities as part of a range of supply-side IRP options, Empire believes there is no need for another rulemaking proceeding to address the same issue. Under the "prior state action" provisions of EAct 2005, the Commission need not take any further or additional action regarding the federal fuel sources standard if, prior to the enactment of the statute in August 2005:

- (1) the State has implemented for such [electric] utility the standard concerned (or a comparable standard);
- (2) the State regulatory authority for such State . . . has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard); or
- (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.¹

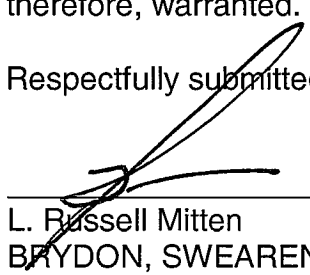
Empire believes that the Commission's rule governing supply-side resource analysis qualifies under these provisions. The Commission, therefore, is free to declare that, because a comparable fossil fuel generation efficiency standard

¹ 16 U.S.C. § 2622(d).

already exists in Missouri, no further action is necessary regarding the federal standard in EAct 2005.

WHEREFORE, for the reasons stated above, Empire strongly urges the Commission to: 1) reject the Staff's suggestion that a rulemaking docket be opened for the purpose of considering changes to Chapter 22 of the Commission's rules; and 2) reject Staff's suggestion that this case be held open pending completion of the aforementioned rulemaking docket. Instead, the Commission should terminate the current case, pursuant to the authority granted by 16 U.S.C. §§ 2621(a) and 2622(d), by issuing an order declaring that a comparable standard already exists in Missouri and that no further action regarding the federal standard is, therefore, warranted.

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Certificate of Service

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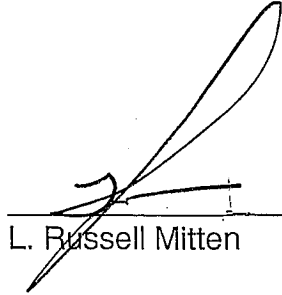
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