

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

In the Matter of a General Investigation Into)
the Commission's Consideration of the Public)
Utility Regulatory Policy Act's Electric) Docket No. 09-GIME-360-GIE
Standards as Implemented in the Energy)
Independence and Security Act of 2007)

ORDER INITIATING INVESTIGATION AND ASSESSING COSTS

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings and conclusions:

Background

1. On October 22, 2008, the Staff of the Kansas Corporation Commission (Staff) filed its Motion to Open a Generic Investigation into PURPA Standards (Motion). Staff moved the Commission for an order opening a generic docket into the consideration of newly enacted Public Utility Regulatory Policy Act (PURPA) standards in light of the Energy Independence and Security Act of 2007.
2. In its motion Staff observed that, under Sections 532 and 1307 of the Energy Independence and Security Act of 2007 (EISA), Congress had directed state utility commissions to consider four new federal standards to PURPA section

111(d). 16 U.S.C. 2621(d). Commissions are to make a determination as to whether or not it is appropriate for that jurisdiction to implement the standard. (PURPA section 111(a)).

3. The standards set forth in EISA Section 532, amending sections 111(d)(16) and (17) of PURPA, are as follows:

(16) INTEGRATED RESOURCE PLANNING.—

Each electric utility shall—

- (A) integrate energy efficiency resources into utility, State, and regional plans; and
- (B) adopt policies establishing cost-effective energy efficiency as a priority resource.

(17) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS.—

(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 and each nonregulated utility 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 one 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.

Pub. L. No. 110-140 § 532, 121 Stat. 1665, 1666 (2007).

4. The standards set forth in EISA Section 1307 are as follows:

(16) CONSIDERATION OF SMART GRID INVESTMENTS -

(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.

(17) SMART GRID INFORMATION -

(A) STANDARD- All electricity purchasers shall be provided direct access, in written or electronic 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.

Pub. L. No. 110-140 § 1307, 121 Stat. 1791, 1792-93 (2007).

5. Federal law provides that consideration of these standards should be made in light of the three stated purposes for the PURPA Title I standards and should include how implementation would affect utilities and consumers in terms of these purposes, although it is not necessary that all three purposes be achieved. These purposes are: (1) conservation of energy supplied by electric utilities, (2) optimal efficiency of electric utility facilities and resources, and (3) equitable rates for electric consumers. (PURPA section 101). Other purposes may be also considered as appropriate to comply with regulatory policy objectives or state law. See Kenneth Rose and Mike Murphy, *Reference Manual and Procedures for Implementation of the "PURPA Standards" in the Energy Independence and Security Act of 2007*, August 11, 2008, pgs. 2, 13-14 (hereinafter, Rose & Murphy), citing the *Joint Explanatory Statement of the Committee of Conference*, Conference Committee Report accompanying Public Law 95-617 (PURPA), 1978 (hereinafter Conference Committee Report).

6. The first purpose of Title I of PURPA, conservation of energy, is intended to promote conservation of energy by utility customers. The second purpose, optimal efficiency, is intended for utilities and their use of energy and facilities, including their capital resources. Congress intended this purpose to

include “conserving scarce energy resources by techniques of rate reform which substitute the use of more plentiful resources produced in the United States in lieu of less plentiful resources, especially those imported into this country.” Rose & Murphy, pgs. 13-14, citing Conference Committee Report, pgs. 69-70.

7. Under PURPA section 111(a), state regulatory agencies must make a determination as to whether implementation of the standards is appropriate to carry out the three Title I purposes noted above. State commissions have discretion as to whether or not to implement any standard. However, they must state the reasons for a decision declining to adopt a standard in writing and make that decision available to the public (PURPA section 111(c)). PURPA section 117(b) also provides state commissions with discretion to modify, increase, decrease, or add to the standards as permitted by state law. In addition, state commissions may take into account in their considerations prior determinations on the standards if these determinations comply with Title I of PURPA. (PURPA section 112(a)). See Rose & Murphy, pgs. 2-3.

8. PURPA also has procedural requirements: there must be public notice and a “hearing,” and the decision must be in writing, based upon findings set forth in the determination and upon evidence presented at the hearing, and be made available to the public. (PURPA section 111(d)(1)). Rose & Murphy, pg. 3. This provision has been interpreted to allow for a determination based upon written filings from interested parties, a determination based upon a full evidentiary hearing, or something in between, such as an abbreviated hearing for

cross-examination purposes. A procedure utilizing workshops or conferences could also be used. Rose & Murphy, pgs. 3, 19.

9. As noted by Staff, under Section 1307(b)(1) of EISA (“Time Limitations,” amending section 112(b) of PURPA), the Commission is required by federal law to begin its investigation no later than December 19, 2008. A decision regarding the appropriateness of the standards must be issued by December 19, 2009. However, as Staff observed, as a result of numbering irregularities in the statute, federal law is ambiguous as to which standards are governed by these time frames or whether the time frame governs all four standards. See Rose and Murphy, pgs. 7-8. As a result, Staff suggested that all four standards be considered by the Commission within the December 19, 2008 to December 19, 2009 timeframe to ensure compliance. Motion, ¶ 2.

10. Staff observed the Commission has considered the role of energy efficiency as a resource in Docket Nos. 08-GIMX-441-GIV, and 08-GIMX-442-GIV. Staff also points to the Commission’s consideration of cost recovery and incentives for energy efficiency programs in Docket 08-GIMX-441-GIV. Staff suggested the Commission seek comments as to whether the EISA permits prior state action as compliance, and if so, whether these decisions are sufficient to comply with the standards. Motion, ¶ 3.

11. Generally, PURPA provides for “grandfathering” of prior state actions under most subsections of PURPA section 111, and no new consideration proceeding is required, if (1) the state implemented the standard or a comparable

standard, (2) the state commission has conducted a proceeding to consider implementation of the standard or a comparable standard, or (3) the state's legislature voted on implementation of the standard or comparable standard. PURPA section 112(d), (e), and (f). However, PURPA section 1307(b)(3), which sets forth grandfathering provisions for the new EISA standards, references only standards (17) and (18). Because the two standards labeled (16) have no prior state action waiver, a plain reading of the statute would appear to indicate any waiver based on prior state action would only apply to the two new standards numbered (17.) See Rose & Murphy, pgs. 9-10, 33.

12. With regard to the Smart Grid standards, Staff proposed the Commission seek comments on the following questions:

“A. Do utilities limit the amount of smart grid investments due to concerns that the investments may not be completely recovered?

“B. Are there procedures already in place that address the possibility of replacing existing long-lived technology due to obsolescence? If so, what impact will Smart Grid investments have on these procedures?” Motion, ¶ 4.

13. Staff further suggested the Commission request comments from interested parties that such parties believe will assist the Commission in its consideration of the standards. Motion, ¶ 5.

14. Staff suggested that in addition to the Commission providing parties an opportunity to file initial comments as noted above, the Commission request interested parties to identify precise issues for the investigation. Staff suggested

parties be provided an opportunity to file responsive comments and upon reviewing both comments and responsive comments, the Commission determine the issues and develop a procedural schedule based on the issues the Commission finds should be addressed. Motion, ¶ 6.

15. Kansas law provides the Commission with full power, authority and jurisdiction to supervise and control the electric utilities operating in Kansas. K.S.A. 66-101. The Commission is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. The Commission has the authority to review and authorize rate and tariff changes. K.S.A. 66-101b, 66-117. The provisions of the Kansas Public Utilities Act and all grants of power, authority, and jurisdiction made to the Commission are to be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted and conferred upon the Commission. K.S.A. 66-101g.

16. The Commission concludes that an investigation into the standards cited above should commence as directed by the EISA. The Commission finds Staff's suggestion that all four standards be addressed in this investigation within the timeline noted above is reasonable. This will ensure compliance with the law. In addition, the standards are related and considering them together makes sense. The Commission finds initiating an investigation is both in the public interest and necessary to comply with the federal law described above.

17. All jurisdictional electric utilities are made parties to this docket and shall be served a copy of this order. Other interested parties who participated in 08-GIMX-247-GIV, 08-GIMX-441-GIV, or 08-GIMX-442-GIV shall also be served a copy of this order and are invited to file a petition for intervention should they desire to participate. This docket involves matters that may be of interest to residential and small commercial utility customers. Therefore, Citizens' Utility Ratepayer Board (CURB) is invited to participate, and may file a petition for intervention should it desire to do so. A copy of this Order will be served upon municipal and cooperative utilities not subject to Commission jurisdiction for their information. Any interested party may also petition the Commission to participate in the docket as a party. Petitions for intervention should be filed by January 16, 2009, but petitions filed after that date will be considered and no motion to file out of time will be necessary.

18. All parties that want to participate actively in the docket and address the Commission on issues must file an entry of appearance to be included on a restricted service list, which will assure receipt of copies of comments and other pleadings. To assure being on the initial restricted service list, an entry of appearance shall be filed by January 16, 2009.

19. The Commission will accept written comments from the public while this docket is pending. Comments should reference Docket Number 09-GIME-360-GIE, *In the Matter of a General Investigation Into The Commission's Consideration of the Public Utility Regulatory Policy Act's Electric Standards As*

Implemented In The Energy Independence and Security Act of 2007, and be sent to the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, 1500 SW Arrowhead Road, Topeka, Kansas 66604, or to **public.affairs@kcc.ks.gov**. Comments can also be made by calling 1-800-662-0027.

20. The Commission finds comments should be solicited from Staff and other parties on the following issues:

I. Grandfathering:

A. With regard to each of the standards cited above, does federal law permit prior state action for compliance?

B. If federal law permits prior state action to constitute compliance for a standard, have Commission considerations and decisions in any prior docket or dockets been sufficient to meet the grandfathering requirements to constitute compliance for any such standard such that the requirement to consider the standard is waived?

II. Smart Grid Investments and Smart Grid Information

Standards:

A. With regard to the two standards pertaining to smart grids:

(1) Do utilities limit the amount of smart grid investments due to concerns investments may not be completely recovered?

(2) Are there procedures already in place that address the possibility of replacing existing long-lived technology due to obsolescence? If so, what impact will smart grid investments have on these procedures?

III. Questions pertaining to all four standards:

A. Parties are requested to provide comments as to what precise issues with regard to each standard should be addressed in this investigation, preliminary comments as to what Commission action should be undertaken on each standard, and any additional preliminary comments they believe will assist the Commission in consideration of these standards.

B. What prior Commission decisions or Kansas legislation should be considered with regard to each standard in this proceeding? Do any of these decisions, or any prior legislation, constitute adoption or implementation of a comparable standard or portion of a standard?

C. Parties should also comment on what procedure they believe would be most useful to address the issues.

21. Parties shall submit such comments by January 30, 2009. Parties may submit reply comments by February 13, 2009.

22. Upon receipt of the responses, Staff is directed to prepare a summary of the responses, including a summary of consensus and disagreement among the commentators, a discussion of the pros and cons of the various suggestions and options discussed in the comments and reply comments, and a recommendation as to the issues to be addressed in this docket and a procedure for the investigation. Staff's report shall be filed by February 27, 2009.

23. Upon review of the parties' comments and Staff's report, the Commission shall schedule a prehearing conference and/or issue a procedural order as may be appropriate, request additional comments, or issue other orders as deemed necessary.

24. Pursuant to K.S.A. 66-1502, the Commission finds that expenses reasonably attributable to this investigation will exceed \$100 and hereby assesses the expenses against all jurisdictional electric utilities. These expenses shall be assessed beginning three business days after the Commission gives the utilities notice of the assessment through service of this Order by United States Mail. These public utilities are hereby notified that they have an opportunity to request a hearing on this assessment in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The investigation described above is hereby commenced.

B. All jurisdictional electric utilities are hereby made a party to this docket and assessed the costs of this investigation and will be served with a copy of this Order. Other interested parties who participated in 08-GIMX-247-GIV, 08-GIMX-441-GIV, or 08-GIMX-442-GIV shall also be served a copy of this Order. A copy of this Order shall be served upon municipal and cooperative utilities not subject to Commission jurisdiction for their information.

C. Petitions for intervention should be filed no later than January 16, 2009, but petitions filed after that date will be considered and no motion to file out of time will be necessary. Entries of appearance should be filed by January 16, 2009.

D. As discussed above, comments or other responses to the questions set forth above shall be submitted by January 30, 2009. Reply comments shall be submitted by February 13, 2009. Staff shall file a report, as discussed above, by February 27, 2009.

E. A party may file a petition for reconsideration of this order within 15 days of the service of this order. If this order is mailed, service is complete upon mailing and 3 days may be added to the above time frame.

F. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: DEC 15 2008

ORDERED MAILED

DEC 16 2008

Susan K. Duffy **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

crr