



**Commissioners**

**ROBERT M. CLAYTON III**  
Chairman

**JEFF DAVIS**

**TERRY M. JARRETT**

**KEVIN GUNN**

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***Missouri Public Service Commission***

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**DANA K. JOYCE**  
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**ROBERT SCHALLENBERG**  
Director, Utility Services

**NATELLE DIETRICH**  
Director, Utility Operations

**STEVEN C. REED**  
Secretary/General Counsel

**KEVIN A. THOMPSON**  
Chief Staff Counsel

July 7, 2010

The Honorable Luann Ridgeway, Chair  
Joint Committee on Administrative Rules  
201 W. Capitol Avenue, Rm. 221  
Jefferson City, MO 65101

Dear Senator Ridgeway:

Thank you for your time and attention to the Renewable Energy Standards rules approved by a majority of the Public Service Commission Commissioners.

This letter is to inform you that despite the Joint Committee on Administrative Rules' ("JCAR") clear decision regarding the amended rule, the majority of the Commission has submitted the entire rule, including the sections disapproved by JCAR, to the Secretary of State – without regard to Sections 536.021.1 and 536.073.8 RSMo 2009.

My attached dissenting opinion to the Majority's decision highlights my concern with the way that the majority cleverly chose to skirt the law, which is further evidenced by the Secretary of the Commission's letter accompanying the rule that was submitted to the Secretary of State.

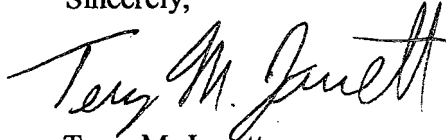
This situation unfortunately will do nothing to advance renewable energy standards but will ensure increased costs for Missouri's regulated utility ratepayers through all of the legal wrangling that is about to ensue over this rule.

As the only Commissioner attending the June 24, 2010, JCAR meeting, I left the meeting acutely aware of the Committee's legitimate concerns regarding the Commission's rule. The second meeting of JCAR and the subsequent decision to disapprove and hold in abeyance two sections of the amended Order of Rulemaking left no doubt as to the Committee's position. Commissioner Davis' dissenting opinion, also attached here, prophetically acknowledges the peril that exists when an agency overreaches in a manner that may be viewed unfavorably by the legislature.

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I appreciate the opportunity to bring these matters to your attention and to express my views. If I may ever be of service to you or the Committee, please do not hesitate to call on me.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry M. Jarrett". The signature is fluid and cursive, with the first name "Terry" being more prominent.

Terry M. Jarrett  
Commissioner

attachments (3)

copies: Senator Joan Bray, Member  
Senator Victor Callahan, Member  
Senator Jack Goodman, Member  
Senator John Griesheimer, Member  
Representative Jason Smith, Vice Chair  
Representative Tim Flook, Member  
Representative Theodore Hoskins, Member  
Representative Bryan Stevenson, Member  
Representative Mike Talboy, Member  
Ms. Cindy Kadlec, Executive Director

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

In the Matter of a Proposed Rulemaking     )  
Regarding Electric Utility Renewable     )  
Energy Standard Requirements             )

File No. EX-2010-0169

**DISSENTING OPINION OF  
COMMISSIONER TERRY M. JARRETT**

The law is clear and I strongly oppose the majority's decision with regard to its approval of filing with the Secretary of State the second/revised Order of Rulemaking of this Commission without compliance with the provisions of Section 536.073.8 RSMo 2009. That section makes it clear that this agency shall "not file [any] disapproved portion of any rule with the secretary of state ..." if the joint committee on administrative rules disapproves any rule or portion thereof. On July 1, 2010 the Joint Committee on Administrative Rules voted to disapprove sections 4 CSR 240-20.100(2)(A) and 4 CSR 240-20.100(2)(B)2 and to hold these sections in abeyance. In a letter dated July 1, 2010, by Senator Luann Ridgeway, Chairman Joint Committee on Administrative Rules to the Missouri Secretary of State, this information is communicated while also informing the Secretary to refrain from publishing the disapproved sections.<sup>1</sup>

The Missouri Public Service Commission, however, by a 3-2 vote, has determined that it will overlook the mandatory statutory obligations assigned to it under Section 536.073.8 and has directed the Secretary of the Commission to *submit*<sup>2</sup> the Amended

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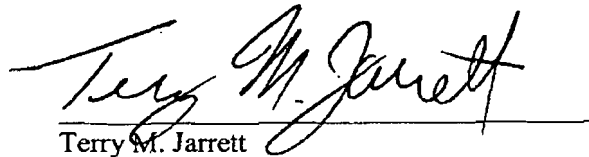
<sup>1</sup> State of Missouri, Joint Committee on Administrative Rules, Letter from the Honorable Luann Ridgeway, July 1, 2010 to the Honorable Secretary of State Robin Carnahan.

<sup>2</sup> Section 536.021.1 requires this Commission to *file*, not submit the final Order of Rulemaking to the Secretary of State. I do not know what the majority means by the term "submit" but I assume it means something different than the term "file" in that they chose not to use "file" which is contained in the law.

Rule, in its complete form, without regard to the law. Because the rule being presented to the Secretary of State is not in conformance with the law, I respectfully dissent.

Focus on the outcome or effect of following the law is not a matter for deliberation by this Commission; rather, this Commission's charge is plain, straightforward and simple - that is, to follow the law, not to ignore it as it sees fit. John Adams once said, "we are a nation of laws, not men." I am afraid that the majority's action today turns that bedrock principle on its head.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Terry M. Jarrett", written over a horizontal line.

Terry M. Jarrett

Submitted this 6<sup>th</sup> day of July, 2010.

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

In the Matter of a Proposed Rulemaking )  
Regarding Electric Utility Renewable )  
Energy Standard Requirements. )

**File No. EX-2010-0169**

RECEIVED  
JUL 06 2010  
SECRETARY OF STATE  
ADMINISTRATIVE RULES

**DISSENT OF COMMISSIONER JEFF DAVIS  
TO AUTHORIZE FILING OF RENEWABLE ENERGY STANDARDS  
RULES WITH THE SECRETARY OF STATE**

I respectfully dissent with the majority of my Commission colleagues in their decision to transmit the entire rule to the Secretary of State including those portions specifically disapproved of by the Joint Committee on Administrative Rules (JCAR). I concur with Commissioner Jarrett's dissent and wish to offer a few more brief thoughts.

**THE RULE ITSELF IS IMPROVED, BUT STILL NEEDS MUCH WORK:**

First, the rule is improved. Had JCAR not intervened Missourians would be stuck with a standard offer contract that would enrich the solar industry at everyone else's expense and utilities would have been facing costly litigation over penalty provisions that everyone now recognizes as being unconstitutional. I am glad my colleagues came to their senses and voted to amend these provisions.

More importantly, JCAR did its job and should be lauded for stopping the geographic sourcing provisions of this regulation. These two provisions will cost tens, possibly hundreds of millions of dollars in the aggregate and those costs will ultimately be born by the ratepayers if adopted.

The rate cap language is also problematic. I heard counsel for Renew Missouri as well as my colleagues at times talk about the intent of the voters or legislative intent.

Everyone needs to get one thing straight – the majority wasn't following the intent of the voters in crafting this section. My impression and that of every disinterested person I asked is that they thought they were voting for a one percent rate cap or at worst one percent per year, not one percent over what projected rates would be otherwise.

**THE LAW IS NOT SILLY PUTTY FOR AGENCIES TO MOLD AS THEY SEE FIT:**

I might not be as eloquent as Commissioner Jarrett quoting John Adams, but my concerns are the same. The law is the law. It's not some guideline that we can disregard at will and read ambiguity into where there is absolutely none. It's designed to limit our actions as public officials, not to be treated like silly putty that we can mold into whatever we want it to be in order to achieve whatever particular purpose we might have at the time, no matter how noble that purpose may be. There is a simple solution: if you don't like the law, change it. We have separation of powers for a reason – to prevent one branch of government from overreaching the other two. There was a whole lot of overreaching going on in this rulemaking docket.

**I AM CONCERNED THAT THE PSC MAJORITY HAS DAMAGED OUR CREDIBILITY WITH THE MISSOURI GENERAL ASSEMBLY:**

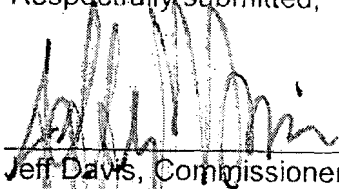
Finally, I am deeply concerned that the Commission majority's initial interpretation of the statutes in submitting the rule to JCAR and its subsequent course of conduct has damaged our credibility with the Missouri General Assembly. We have to appear in front of the legislature to testify on our budget and on numerous other policy issues. We need the legislature's support and I question whether they are going to be inclined to listen to us after this debacle.

The legislature has a number of tools at its disposal when dealing with administrative agencies. It would be unfortunate, but understandable if the PSC budget gets reduced, our

rulemaking authority gets restricted or nobody listens to us on an important policy issue as a result of these events.

For all of these reasons, I respectfully dissent.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jeff Davis", is written over a horizontal line.

Jeff Davis, Commissioner

Dated at Jefferson City, Missouri  
On this 6<sup>th</sup> day of July 2010.



**Commissioners**

**ROBERT M. CLAYTON III**  
Chairman

**JEFF DAVIS**

**TERRY M. JARRETT**

**KEVIN GUNN**

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Chief Staff Counsel

July 6, 2010

Robin Carnahan  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

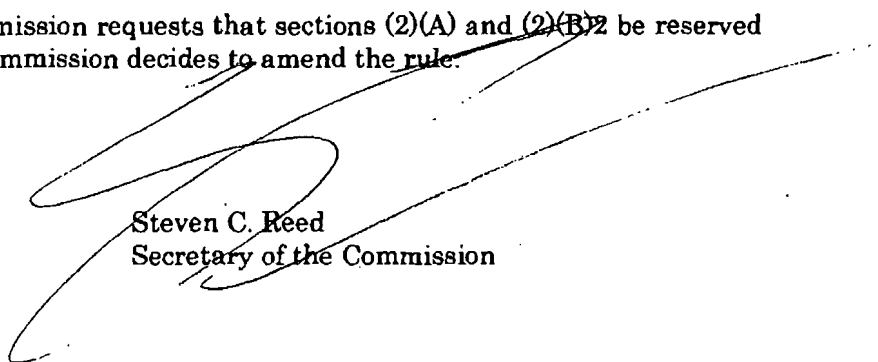
***Re: 4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements***

Dear Secretary Carnahan,

On July 1, 2010, the Public Service Commission voted to submit a Revised Order of Rulemaking for publication. Later on July 1, the Joint Committee on Administrative Rules voted to disapprove sections (2)(A) and (2)(B)2 of that rule, which contain provisions regarding geographic sourcing. JCAR approved the other portions of the rule and waived any further time JCAR may have to conduct hearings on the rule.

At its agenda meeting on July 6, 2010, the majority of the Commission voted to submit the Revised Order of Rulemaking for publication. This rule includes the portions disapproved by JCAR but, in accordance with section 536.073.8, the Commission is not filing those sections for publication. Rather, the Commission expects that the disapproved portions of the rule will be held in abeyance by JCAR and continue to work through the process set forth in Chapter 536 for the General Assembly to act.

The Public Service Commission requests that sections (2)(A) and (2)(B)2 be reserved for later use in the event the Commission decides to amend the rule.

  
**Steven C. Reed**  
Secretary of the Commission