

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

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

**Case No. EX-2010-0169**

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

I fully support the development of renewable resources for use by the ratepayers of the State of Missouri. Renewable resources take many forms, with varying benefits and costs associated with each choice, and correlative benefits and costs to Missouri's ratepayers and the electric utilities.

I cannot support the rules as written because, in my opinion, they do not comport with the law, and go beyond the grant of authority given to this Commission with regard to renewable energy standards for electric utilities. They further lack the requisite safeguards to ensure that fraud and mischief do not occur with regard to the implementation of these rules, the benefits they purport to provide, and the subsidies they seek to promote.

The generation and purchase of electricity from renewable resources by electric utilities is the centerpiece of Missouri's "Renewable Energy Standard."<sup>1</sup> In this case, the Commission has been given what is nearly an impossible task due to the lack of clarity and certainty in the law. The challenges posed in drafting and promulgating rules under this law set up pitfalls which in many respects the rule sufficiently tackles and addresses

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<sup>1</sup> Section 393.1020 stating that Sections 393.1025 and 393.1030 "shall be known as the "Renewable Energy Standard."

for which the Commission is commended under the circumstances. Nevertheless, the rules are also riddled with faults that are too complex and numerous to expand upon in lengthy detail here. I am confident that interested persons who disagree with provisions of these rules will make their voices heard in all appropriate venues, including the courts and the legislature.

I am compelled to provide a limited comment on several items in particular. Not only do I disagree with the Commission's promulgation of these rules without further refinement and review, I believe that the rules impose requirements that are beyond those contemplated by the rulemaking authority set out in Section 393.1030.1 or 393.1030.2 RSMo Supp. 2009, the Missouri Constitution, Missouri statutes and established common law. These concerns include: (1) the requirement that electricity and RECs<sup>2</sup> be bundled, (2) the use of an involuntary "standard offer contract" for solar photovoltaic S-REC prepayment to retail account holders that install such systems with no corresponding generation requirement (3) inadequate safeguards and protective oversight to deter fraud and mischief with regard to S-REC generation as well as pricing of RECs, (4) placing limitations upon electric utilities in defending complaint cases,<sup>3</sup> (5) uncertainty in the setting of the price of RECs in the context of penalties<sup>4</sup>, and (6) the geographic sourcing limitation of renewable energy resources only to Missouri.

The jurisdiction of this Commission and its administrative charge is limited by the law to ratepayers and the regulated utilities. The law regarding Renewable Energy

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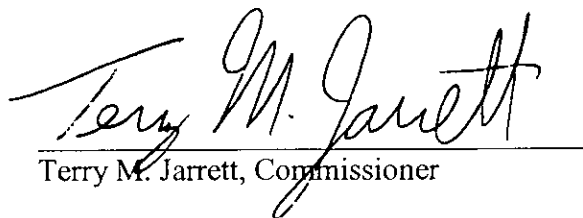
<sup>2</sup> See 4 CSR 240-20.100(1)(J).

<sup>3</sup> *State ex rel. Office of Public Counsel v. Public Service Comm'n of Missouri*, 858 S.W.2d 806, 812 (Mo. App. W.D. 1993) (stating that "[T]he Commission must consider **all relevant factors**, including all operating expenses and the utility's rate of return, when determining a rate authorization.")(emphasis added).

<sup>4</sup> See Missouri Constitution, Art. I, Section 31, providing "That no law shall delegate to any commission, bureau, board other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation."

Standards does not open wide the power of the Commission to subrogate these interests to the interests of others. Ultimately, these rules simply do not provide adequate protection to Missouri ratepayers and the regulated utilities. The policy choices taken by the majority will increase electric rates beyond what is reasonable and necessary.

Therefore, I dissent.

  
Terry M. Jarrett, Commissioner

Submitted this 2<sup>nd</sup> day of June, 2010