To: MPSC Staff

From: Erin Noble, Missouri Coalition for the Environment

Date: June 25, 2010

Re: EW-2010-0265, rulemaking to implement the Missouri Energy Efficiency Investment Act

The Missouri Coalition for the Environment appreciates the opportunity to provide additional input to the staff on the draft rules implementing the Missouri Energy Efficiency Investment Act and commends the staff for the work done so far in this crucial endeavor. The comments below are supplemental to our previous comments, and refer to the June 18 draft circulated by John Rogers.

A. Noteworthy and commendable aspects of the current draft -

First, I would like to express our support for a number of important positive elements of the current draft. The evaluation, measurement and verification section in rule 093(7) is clear, well-reasoned and should result in confidence that the savings reported is actually achieved, as well as provide information that will help to refine and improve the programs over time. Further, we support the changes in section 094(3) which sets a three year cycle for utility plan filings and allows 120 days, rather than just 60 days, for the process of approval for a utility plan filing. Further, we commend the staff for allowing utilities to file a cost-recovery mechanism that seeks to recover costs for approved programs as they are incurred, rather than only historical costs. And finally, we appreciate the removal of the words "highly confidential" in reference to the annual reports, but recommend the inclusion of specific language specifying that these reports will be publicly available.

B. Critical lack of clarity and credibility regarding performance targets and goals -

Our key concern with the current draft is the way in which the rule attempts to answer the question: "How much energy efficiency should the utility programs seek to capture?" Under MEEIA, of the goal of the program must be to capture "all cost-effective" savings, and defines cost-effectiveness with reference to the total resource cost test. The determination of how the performance goal is set isa critical (perhaps the most critical) element of the program as it will determine what the utilities may earn under the performance incentive.

We are concerned that the current draft is confusing and will create unnecessary conflict in the plan filing and approval processes. We would urge the following changes to provide transparency, clarity and confidence in the determination of whether a utility DSM plan will achieve the goal of all cost-effective savings –

1. For the reasons set out in the memo submitted by MDNR, we believe that the IRP process is not likely to result in a set of DSM resources that represent the cost-effective potential, and therefore the IRP should not drive the approval of the utility programs approved under MEEIA, but rather the programs approved under MEEIA should be automatically incorporated into the utilities resource plans..

2. We agree with staff that both the potential studies, and a set of gradually-increasing targets that are based on the experience of leading states and utilities, should be relevant to setting the performance goals and approval of the plans. We would urge a process that begins with a presumption that Missouri is capable of meeting these graduated targets, but which allows the use of the potential studies as evidence that the target should be modified either to increase or decrease the target based on unique characteristics of a given service territory. NRDC and DNR submitted specific language on this in their May 25 filing.

3. We urge the staff to use these rules to ensure that the potential studies submitted by the utilities are thoroughly vetted by all stakeholders and are based on assumptions that have been validated through the collaborative process. And finally, given the function of the annual incremental goals set out in 094(2)(A) as representing reasonable progress toward all cost-effective energy efficiency, the current draft numbers are not credible in that they represent unreasonably modest progress, and will put Missouri consumers and economy at a disadvantage relative to its neighbors in Iowa, Illinois, Indiana, Ohio, and Michigan. The first year goal of 0.3% represents a level of savings that can easily be met even today and certainly well ahead of 2012. We would urge that the targets be returned to their former levels, with the caveat that these targets can be modified during the plan approval process based on information in the potential studies, and that the targets themselves can be revisited after the first four years when the entire rule is evaluated.

C. Remaining questions –

Finally, several elements of the current draft, while less central to the success of the program have raised questions that we would like to see addressed in the next draft. Specifically:

1. The current draft assigns costs for low-income programs to the rest of the residential class, rather than allocating those costs to all customer classes. Since the low-income programs benefit all ratepayers, we believe that it would be more appropriate to spread those costs among all customer classes.

2. Section 094(7) regarding recipients of tax credits is overly broad and may be difficult if not impossible to implement. As currently drafted, a resident that received a tax rebate for, say,

a new furnace, would be disqualified from participation in any utility program. It is unlikely that this was the result anticipated by the legislature in drafting the statute.

3. In Section 094(6), opt-out agreements can be revoked by the customer, but there is no parallel process for an opt-out agreement to be revoked by a utility or the commission, if a customer's eligibility for that opt-out agreement is no longer valid. The rule should specify that under these circumstances, the utility or the commission staff can initiate the revocation of an opt-out agreement.

4. The definition of avoided costs in section 163(B) might benefit from some additional clarification. Everything after the first sentence is clear, but the first sentence could be read to mean the net savings after subtracting the program costs. One way of making the definition more clear would be to simply remove the first sentence.