Edward F. Downey
Direct: (573) 556-6622
E-mail: efdowney@bryancave.com

June 19, 2009

Mike Taylor
Public Service Commission
Governor Office Building
200 Madison Street
P. O. Box 360
Jefferson City, MO 65102-0360

Bryan Cave LLP
Riverview Office Center
221 Bolivar Street
Jefferson City, MO 65101-1574
Tel (573) 556-6620
Fax (573) 556-6630
www.bryancave.com

Chicago
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Los Angeles
New York
Phoenix
Riyadh
Shanghai
St. Louis
United Arab Emirates (Dubai)
Washington, DC

And Bryan Cave,
A Multinational Partnership,
London

Dear Mr. Taylor:

Thank you for allowing the MIEC to submit further comments regarding the proposed renewable energy regulation. Attached please find our proposal for how the regulation could read. The proposed edits include technical suggestions, as well as suggested edits of a substantive nature. We still struggle with the proposed regulation because we disagree with the approach taken in the proposed regulation on a number of fundamental issues. Our April 27 letter to you outlined our concerns. Below please find further amplification of those concerns.

The One Percent Cap on Increased Rates

We believe the proposed regulation's allowance of an annual one percent average increase in rates due to the renewable mandate, rather than a one percent hard cap, is contrary to the terms of 393.1030.2(1) and to the ballot title for Proposition C, which authorized that section. We understand that a conflict can be found in this regard in the language of section 393.1045, but section 393.1030.2(1) should prevail over section 393.1045 for the reason that 393.1030 was adopted by the general electorate and is a more recent adoption than of section 393.1045, which was adopted much earlier than November 4, 2008. *See Edu-Dyne Systems, Inc. v. Trout*, 781 S.W.2d 84, 86 (Mo. banc 1989) (citing *Kilbane v. Director of Department of Revenue*, 544 S.W.2d 9, 11 (Mo. banc 1976).

Moreover, the proposed regulation assumes that the statute's use of "average" in reference to the one percent limitation on rate increases is an average increase per year over a number of years. As explained above, we believe that the one percent limitation is a hard cap. In addition, however, we believe that the term "average" was intended to apply to customer classes. For example, the impact of the renewables mandate might be an increase of 0.6% to residential customers, a 1% to commercial customers, and 1.3% to industrial customers. If, on average, the overall

increase to all customers was within the one percent limitation, then the conditions of the ballot initiative, and section 393.1030 would have been met.

A RESRAM Should be Implemented or Discontinued Only in a Rate Case

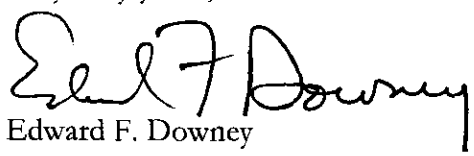
In addition to the above, we submit the following. An adjustment mechanism for renewables (a RESRAM) should be instituted or discontinued only during a general rate proceeding. Thus, we have suggested language in the third line of Section (6)(A) and the third line of (6)(B), as well as the elimination of Section (6)(C), to require that.

Implementation should occur only during the context of a rate proceeding. Otherwise, a utility could increase its rates under the RESRAM, when it may already be earning more than an adequate rate of return with its current rates, even including the costs that the RESRAM is designed to cover. For example, if a utility were collecting revenues that allowed it to exceed its authorized rate of return by $5 million, and its RESRAM costs were $4 million, there would be no need to increase rates. The only way to know whether this situation exists or not is to require the implementation of the RESRAM in the context of a general rate proceeding. This very logical approach is identical to what is required in the case of instituting an environmental cost recovery mechanism or in implementing a fuel adjustment clause mechanism. The RESRAM should not be given superior treatment. Adequate protection for customers requires that the institution of a RESRAM occur only during a rate proceeding.

The utility should be allowed to discontinue the operation of a RESRAM only during the course of a general rate proceeding. After a RESRAM has been in place for some period of time, it is possible that the declining revenue requirement associated with existing investment will outstrip the additional revenue requirement associated with new investment. If there is an offset, then eliminating the RESRAM would prevent the reductions from flowing through to customers. An appropriate consideration of these circumstances can only occur during a general rate proceeding. This very logical approach is the same as is required for a utility wanting to eliminate an environmental cost recovery mechanism or to eliminate a fuel adjustment mechanism. Adequate customer protection requires that elimination of a RESRAM occur only during a general rate proceeding.

Thank you for your consideration.

Very truly yours,



Edward F. Downey

EFD: lea
Enclosure