BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of a Proposed Rulemaking Regarding Electric Utility Renewable Energy Standard Requirements	)))	Case No. EX-2010-0169

APPLICATION FOR REHEARING AND REQUEST FOR STAY

COMES NOW the Missouri Energy Development Association ("MEDA"),[1] by and through the undersigned counsel, and, pursuant to §386.500, RSMo., 4 CSR 240-2.080, and 4 CSR 240-2.160, submits its Application for Rehearing and Request for Stay. In support thereof, MEDA states as follows to the Missouri Public Service Commission ("Commission"):

1. MEDA respectfully seeks rehearing and/or reconsideration of the Commission's Revised Order of Rulemaking and the Order Setting Effective Date, both issued herein on July 1, 2010. MEDA also requests a stay of the effectiveness of the Revised Order of Rulemaking and the rule purportedly adopted thereby, 4 CSR 240-20.100.

2. On December 2, 2009, the Commission issued its Notice of Finding of Necessity, which states the intention to propose rules necessary to set forth standards required to comply with the "Renewable Energy Standard" legislation adopted by initiative petition, known as Proposition C, and codified at RSMo. §§393.1020 through 393.1030 ("Proposition C").

3. On January 8, 2010, the Commission submitted a proposed rule to the Missouri Secretary of State for publication in the Missouri Register. On June 2, 2010, following a period for public comment, which included a public hearing on April 6, 2010, the Commission issued

[1] MEDA is a nonprofit corporation organized and existing under the laws of the State of Missouri, active and in good standing. MEDA member companies consist of Union Electric Company d/b/a AmerenUE, Kansas City Power and Light Company, The Empire District Electric Company, Laclede Gas Company, Missouri Gas Energy, Atmos Energy Corporation, and Missouri-American Water Company.

an Order of Rulemaking in the above-captioned case, to be effective on July 2, 2010, for the stated purpose of adopting Commission Rule 4 CSR 240-20.100. This Order of Rulemaking was forwarded to and filed with the Joint Committee on Administrative Rules ("JCAR") on June 2, 2010.

4. Prior to the effective date of the June 2 Order of Rulemaking, MEDA filed with the Commission MEDA's Application for Rehearing and Request for Stay regarding the June 2 Order of Rulemaking and the rule adopted therein. Said filing made by MEDA on June 30, 2010, is adopted by reference and incorporated herein for all purposes.

5. On July 1, 2010, the Commission issued a Revised Order of Rulemaking in the above-captioned case. The Revised Order states that the Commission is again adopting 4 CSR 240-20.100. This Revised Order of Rulemaking was forwarded to and filed with JCAR on July 1, 2010. Also on July 1, 2010, the Commission issued an Order Setting Effective Date, purportedly to be effective upon issuance, stating that the Revised Order of Rulemaking issued on July 1, 2010, shall become effective at 12:00 p.m. on July 6, 2010.

6. Also on July 1, 2010, JCAR, thorough its Chairperson, Senator Luann Ridgeway, issued the letter attached hereto as Exhibit A and submitted the same to the Secretary of State. As noted therein, JCAR disapproved subsections (2)(A) and (2)(B)2 of rule 4 CSR 240-20.100, as set forth in the Commission's Revised Order of Rulemaking. The letter also states that in a motion passed by JCAR "was an action to approve the remaining portions of this rule and waive any further time the Committee may have to conduct hearings on the rule."

7. The Commission is purely a creature of statute, and the Commission's powers are limited to those conferred by statute, either expressly or by clear implication as necessary to carry out the powers specifically granted to it. *State ex rel. Public Service Commission v.*

Bonacker, 906 S.W.2d 896 (Mo.App. S.D. 1995); *see also State ex rel. Utility Consumers Council* v. *Public Service Commission,* 585 S.W.2d 41 (Mo. banc 1979). Further, "(i)t must be kept in mind that the Commission's authority to regulate does not include the right to dictate the manner in which [a regulated utility] shall conduct its business." *Bonacker,* at 899; *quoting State v. Public Service Commission,* 406 S.W.2d 5, 11 (Mo. banc 1966).

8. The text of the rule contained within the Revised Order of Rulemaking varies from the text of the rule contained within the June 2 Order of Rulemaking, but the Revised Order of Rulemaking and the rule purportedly adopted thereby continue to be in excess of the Commission's statutory authority, either express or implied, and continue to purport to dictate the manner in which each regulated utility shall conduct its business.

9. The Revised Order of Rulemaking, the rule contained therein, and the Order Setting Effective Date are unconstitutional, unlawful, unjust, in excess of the Commission's statutory authority, unreasonable, made upon unlawful procedure, arbitrary and capricious, either individually or cumulatively, for all the reasons set forth herein and in MEDA's Application for Rehearing filed with respect to the June 2 Order of Rulemaking. As such, the Commission should rehear and/or reconsider this matter and thereafter revoke and rescind its Order Setting Effective Date and its Revised Order of Rulemaking and the rule purportedly adopted thereby.

10. RSMo. §386.250(6) provides that all rules adopted by the Commission "shall be filed with the secretary of state and published in the Missouri Register as provided in chapter 536, RSMo." RSMo. §536.024.1 then provides that "(w)hen the general assembly authorizes any state agency to adopt administrative rules or regulations, the granting of such rulemaking authority and the validity of such rules and regulations is contingent upon the agency complying with the provisions of this section in promulgating such rules after June 3, 1994."

11. RSMo. §536.014 also provides that "(n)o department, agency, commission or board rule shall be valid in the event that: (1) There is an absence of statutory authority for the rule or any portion thereof; or (2) The rule is in conflict with state law; or (3) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected." Further, RSMo. §536.021.1 provides as follows:

> No rule shall hereafter be proposed, adopted, amended or rescinded by any state agency unless such agency shall first file with the secretary of state a notice of proposed rulemaking and a subsequent final order of rulemaking, both of which shall be published in the Missouri Register by the secretary of state as soon as practicable after the filing thereof in that office . . . If the joint committee on administrative rules disapproves any proposed order of rulemaking, final order of rulemaking or portion thereof, the committee shall report its finding to the house of representatives and the senate. No proposed order of rulemaking, final order of rulemaking or portion thereof shall take effect, or be published by the secretary of state, so long as the general assembly shall disapprove such by concurrent resolution pursuant to article IV, section 8 within thirty legislative days occurring during the same regular session of the general assembly. The secretary of state shall not publish any order, or portion thereof, that is the subject of a concurrent resolution until the expiration of time necessary to comply with the provisions of article III, section 32.

12. Additionally, RSMo. §536.021.5 provides, in part, that "within ninety days after the hearing on such proposed rulemaking if a hearing is held thereon, the state agency proposing the rule shall file with the secretary of state a final order of rulemaking either adopting the proposed rule, with or without further changes, or withdrawing the proposed rule, which order of rulemaking shall be published in the Missouri Register. . . If the state agency fails to file the order of rulemaking as indicated in this subsection, the proposed rule shall lapse and shall be null, void and unenforceable."

13. With regard to the relationship between filings with the Secretary of State and JCAR, subsections two through four of RSMo. §536.024 provide as follows (emphasis added):

> 2. Upon filing any proposed rule with the secretary of state, the filing agency shall concurrently submit such proposed rule to the joint committee on administrative

rules, which may hold hearings upon any proposed rule or portion thereof at any time.

3. A final order of rulemaking shall not be filed with the secretary of state **until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period.**

4. The committee may file with the secretary of state any comments or recommendations that the committee has concerning a proposed or final order of rulemaking. Such comments shall be published in the Missouri Register.

14. The Revised Order of Rulemaking, the rule set forth therein, and the Order Setting Effective Date are in violation of the above-described Missouri statutes. Due to both procedural and substantive errors on the part of the Commission: there is an absence of statutory authority for 4 CSR 240-20.100; as adopted by the Commission, 4 CSR 240-20.100 is in conflict with state law; and 4 CSR 240-20.100, as adopted by the Commission, is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on those affected. Further, the procedures followed by the Commission in promulgating 4 CSR 240-20.100 have violated the constitutional due process rights of MEDA and others, and, if enforced, the rule will continue to violate the constitutional due process rights of MEDA and others.

15. The Commission's publicly-noticed agenda for its meeting on June 30, 2010, indicated that the Commission would be discussing Commission Case No. EX-2010-0169 and the Renewable Energy Standards Rule, 4 CSR 240-20.100. The agenda did not indicate that any vote would be taken in said case and did not provide notice of any order to be taken up by the Commission. At the conclusion of the Commissioners' deliberations on June 30, 2010, Chairman Clayton stated that the Commission would recess and reconvene on July 1, 2010. When the Commission reconvened on July 1, 2010, the Commission continued its discussions in Case No. EX-2010-0169. The Commission then voted upon both the Revised Order of

Rulemaking and the Order Setting Effective Date. Each of these votes was in violation of the public meetings law, RSMo. Chapter 610 (the Sunshine Law), and, therefore, each order is unlawful and void.

16. Further, both the Revised Order of Rulemaking and the Order Setting Effective Date are in violation of the Missouri statutes referenced above, in that each order was issued without statutory authority. As noted above, the Commission is a creature of statute and its powers are limited to those conferred by statute, either expressly or by clear implication. Pursuant to §536.021.5, the Commission is required to file its final order of rulemaking with the Secretary of State within ninety days after the hearing on the rulemaking, but, pursuant to §536.024.3, the Commission must file this final order of rulemaking with JCAR 30 days in advance of any filing at the Secretary of State. Given the issuance of its Revised Order of Rulemaking on July 1, 2010, the Commission will be unable to comply with these statutes, and MEDA and others interested in the rulemaking will be denied their statutory rights to provide comments to JCAR and have the opportunity for a hearing or hearings on the final order of rulemaking and the rule contained therein before JCAR. As such, the rulemaking should be declared null and void.[2]

17. Another procedural defect is that the Commission purports to have the Revised Order of Rulemaking take effect five days after issuance and the Order Setting Effective Date

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[2] The letter attached hereto as Exhibit A provides that JCAR was willing to "waive any further time the Committee may have to conduct hearings on the rule." MEDA is unaware of the specific meaning or intent of this "waiver" by JCAR, but, in any event, JCAR is unable to waive MEDA's rights and is unable to waive the mandatory provisions of the statute.

take effect upon issuance. As noted above, the final order of rulemaking, to be effective, must be filed with the Secretary of State within 90 days of the rulemaking hearing, but, to be effective, said final order of rulemaking also must be filed with JCAR 30 days prior to filing with the Secretary of State. In addition to the failure to comply with these requirements, the Commission has failed to comply with RSMo. §386.490 and relevant case law.

18. Section 386.490.3 provides that "(e)very order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided." The discretion to provide for an effective date on less than 30 days' notice, however, is not unlimited. To make the right to rehearing meaningful, parties must be given a reasonable period of time in which to file. *State ex rel. Office of the Public Counsel v. PSC*, 236 S.W.3d 632 (Mo. banc 2007); *citing State ex rel. St. Louis County v. PSC*, 228 S.W. 2d 1, 2 (Mo. 1950). In the instant case, the Commission has attempted to allow no time to seek rehearing of the Order Setting Effective Date and allow only five days (which includes a Saturday, Sunday, and legal holiday) to seek rehearing of the Revised Order of Rulemaking. Further, in the event the Commission is unable to lawfully state an effective *time* for an order, the Commission has, in effect, required that applications for rehearing on the Revised Order of Rulemaking be filed by 4:00 p.m. on Friday, July 2, 2010 – the day after the order issued.

19. Turning to the substantive errors in the rule itself, the Revised Order of Rulemaking purports to link Renewable Energy Credits (RECs) and Solar Renewable Energy Credits (S-RECs) with the electricity from the associated renewable energy resource by requiring that this electricity be sold to Missourians. *See*, 4 CSR 240-20.100(2). This requirement is unauthorized by law and is, in fact, contrary to the spirit and letter of the enabling legislation.

a. Proposition C specifically contemplates that an electric utility "may comply" with its renewable energy portfolio requirements "in whole or in part by purchasing RECs." RSMo. §393.1030.1. This mechanism of compliance is analogous to the national market created for the sale of sulfur dioxide emission allowances under the Clean Air Act Amendments of 1990. The option to buy RECs instead of energy was intended to "unbundle" the benefit of renewable energy production from the deliverability requirement. It is clear that the legislation was intended to allow electric utilities to comply with their renewable energy portfolio requirements by purchasing tradable certificates instead of arranging for the delivery of a specific resource's output (i.e., "green electrons") into a particular service territory.

b. This fact was confirmed by witness Khristine Heisinger, an attorney for a number of wind energy producers who testified at the Commission's April 6, 2010, hearing as follows:

> First, I want to talk about the bundling and unbundling, which I believe Chairman Clayton at one point tried to separate from the geographic sourcing aspect. And I can say that – I drafted that provision, and it was never intended to require bundling of RECs with electricity. (Tr. p. 257, ll. 9-14)

c. Subsection (2)(B)(2) of the RES rule expressly limits the credits an electric utility may claim to meet its RES requirements derived from an out-of-state generating facility to only those megawatt hours which are "sold to Missouri customers." This effectively restricts the scope of renewable energy facilities outside of Missouri to only those with respect to which an electric utility has a purchased power contract or some other type of contract, and this acts as a de facto bundling relationship requirement.

d. Not only is the Commission's decision to link or bundle renewable energy generation with the associated RECs at odds with the plain language of Proposition C, it is also inconsistent with the broader objective of deploying renewable energy resources in a cost effective manner. The RES rule has the counterintuitive and counterproductive effect of limiting a utility's ability to meet its renewable energy portfolio requirements. This will have the unintended effect of driving up the cost of renewable energy compliance for electric utility customers and stifling the development of renewable energy resources by channeling limited resources to less than optimally efficient producers. This is directly contrary to the public interest and is certainly contrary to the overall intent of Proposition C, that is, to encourage the deployment of renewable energy resources at the lowest possible cost.

e. The Commission's linkage or bundling of renewable energy generation with associated RECs also has the practical and unlawful effect of limiting the geographic area within which electric utilities may secure renewable energy or RECs. This is at odds with the enabling legislation which does not in any way restrict Missouri electric utilities' ability to obtain renewable energy or RECs from any source at any location. The definition of the term "REC" is not limited to electricity generated just in the State of Missouri or to energy delivered to Missouri customers. To the contrary, the legislation expressly contemplates that an electric utility may acquire either electricity or RECs generated in states other than the State of Missouri. This simple fact is reflected in the language of RSMo. §393.1030.1, which provides an incentive to electric utilities to favor Missouri generation by providing a 25 percent additional credit towards compliance by stating the following:

> Each kilowatt hour of eligible energy generated in Missouri shall count as 1.25 kilowatt hours for purposes of compliance.

The law provides for an incentive for electric utilities to use Missouri generation sources, but, importantly, does not mandate it. Such an incentive for the use of in-state renewable generation sources only makes sense if it was contemplated that sources outside of the state would also be permissible. Just from a common sense perspective, there is no plausible purpose for the 25 percent compliance incentive had the objective behind Proposition C been to limit renewable energy generation sources only to those located in Missouri.

f. The Commission's rationale for the geographic sourcing limitation in the RES rule is based on an inventive and unjustified reading of Proposition C. On page 8, the Commission attempts to rationalize its restriction on geographic sourcing on the following language in §393.1030.1:

> The portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state.

This conclusion is unreasonable and unlawful. It is apparent that the statutory language was intended to establish a demand baseline for how the Commission is to determine whether the stair stepped portfolio objectives have been achieved. This language does nothing more than establish what number of megawatt-hours should be used when applying the percentages under the portfolio requirement in future years. This language in no way can be fairly read as nullifying the obvious objective of Proposition C, that is, to sever RECs from the generation source and to allow for unrestricted trading of the certificates. The geographic limitation imposed by the Commission is directly adverse to the letter and intent of Proposition C.

g. The restriction on the geographic area within which electric utilities may secure renewable energy or RECs also impermissibly burdens interstate commerce for a protectionist or discriminatory purpose and is, consequently, *per se* invalid. The geographic sourcing limitation contained in the RES rule has an obvious protectionist motive, that is, to favor renewable energy generated in Missouri over renewable generation located in other states. The intent and impact of the rule is to restrict the flow of interstate commerce for the economic benefit of a specific group of Missouri businesses. This represents economic protectionism or discrimination and is a violation of the dormant Commerce Clause of the United States Constitution. U.S. Const. Art. I, § 8, cl. 3. Consequently, the regulation is invalid.

h. Beyond just the legalities associated with the geographic sourcing limitation contained in the Commission's Order of Rulemaking, is the practical consideration that a sourcing restriction will simply limit the energy resource alternatives available to electric utilities and, consequently, drive up costs because electric utilities may not be able to utilize least cost options to meet their portfolio requirements. This will translate into less competition on the part of suppliers and, inevitably, higher costs to electric utilities and their customers. This is squarely at odds with the primary objective of Proposition C, that is, to encourage electric utilities to seek out and use affordable sources of renewable energy to meet customers' demands.

20. As noted above, Proposition C provides that electric utilities "may comply" with their renewable energy portfolio requirements by purchasing RECs. The purchase of RECs is thus left to the discretion of each utility's management. The Commission's rule at subsection (3) states that "RECs and S-RECs *shall be used* to satisfy the RES requirements of this rule" thus

making the purchase of RECs mandatory. The Commission has no authority to make mandatory an act or thing that is discretionary as set forth in a statute.[3] There is no requirement in Proposition C (or in any other Missouri statute) that electric utilities use RECs and, consequently, there can be no requirement in the implementing rule that they do so.

21. The Commission's mandate at 4 CSR 240-20.100(4)(H) that electric utilities extend to customers wanting to install solar energy systems a so-called standard offer contract, as adopted by the Commission's June 2 Order of Rulemaking, has no legitimate basis in the enabling legislation or in any other Missouri statute. The only financial incentive contemplated by Proposition C is a $2.00 per watt subsidy found in §393.1030.3. The standard offer contract, however, is a separate, additional subsidy. The standard offer contract is in no way authorized by law and is, consequently, in excess of the Commission's statutory authority.[4]

a. The standard offer contract requirement is also a violation of electric utilities' due process rights in that it constitutes a mandatory monetary payment by utilities to customers installing solar energy systems in violation of Mo. Const. Art. I, § IX and the Fifth Amendment of the United States Constitution.

b. The standard offer contract provision contained in the Order of Rulemaking is in excess of the Commission's statutory authority in that it purports to manage the business of electric utilities. As noted, the Commission's authority to regulate certain aspects of an electric utility's operations and practices does not include the right to dictate

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[3] The Commission may not adopt a rule which nullifies the objective of the General Assembly as expressed in a legislative enactment. *State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Commission*, 225 S.W.2d 792 (Mo. App. 1949).

[4] The Commission has removed this section from the rule, as purportedly adopted in its Revised Order of Rulemaking issued on July 1, 2010. Given the procedural irregularities of the Revised Order, however, MEDA sets forth it allegations of error herein with regard to the provision of the rule as adopted by the June 2 Order of Rulemaking.

the manner in which the Company conducts its business. *State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 14 (Mo. banc 1930). The Commission's powers are "purely regulatory in nature." *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 171, 181 (Mo.App. W.D. 1960). The Commission does not have the authority to take over the general management of any utility. While the Commission may regulate a public utility's operations as the law expressly permits, it may not substitute its business judgment for that of the company's management so long as safe and adequate service is being provided.

c. The standard offer contract is also unlawful because it puts the Commission in the conflicting role of both directing the business practices of the utility that it regulates and, consequently, binds the Commission in subsequent rate cases concerning the decisions it made about the business and management practices it has mandated. The Commission has rejected the conflicting dual role when previously confronted with it. The Commission has conceded in arguments to the Southern District Court of Appeals that it cannot be put in the conflicting position of regulator and regulated. *State ex rel. Public Service Commission v. Bonacker*, 906 S.W.2d 896, 899 (Mo. App. 1995). It is clear that the Order of Rulemaking puts the Commission in the untenable position of mandating a contract with a power supplier and then, subsequently, determining whether the terms of the contract are reasonable and prudent. How can the Commission be expected when setting rates to decide on the prudence of the costs associated with these generous standard solar contract subsidies when it has mandated the contract offers in the first place?

d. Where the standard offer contract is concerned, the Commission should reconsider the policy it is purporting to enact. The generous portfolio of subsidies to solar energy developers will burden the general body of Missouri utility customers with unreasonably high electric costs in order to prop up a fledgling industry. If the viability of solar energy is beyond question, why can't solar developers fund their own projects or secure bank financing after presenting a viable business plan? The mandated contract offer is an unauthorized and significant subsidy to the solar developers using someone else's money. The "someone else" in this case is the general body of electric ratepayers, many of whom are already straining to make ends meet.

e. Assuming that the standard offer contract for solar developers withstands legal scrutiny, the Commission has unlawfully favored a particular segment of generators by purporting to prohibit electric utilities from extending a contract offer to an affiliate. *See*, 4 CSR 240-20.100(4)(H)(6)(e). This limitation is squarely at odds with Proposition C which permits "electric utilities to generate or purchase electricity from renewable energy resources." Proposition C contemplates that electric utilities should have a self-build option to meet their renewable energy portfolio requirements, an option which makes sense in the event that third party providers are not able to supply renewable energy at a reasonable cost. In any event, the Commission has no authority under Proposition C to limit, either directly or indirectly, solar generation investments by electric utilities and thus favor one class of providers over another.

22. With the Revised Order of Rulemaking, 4 CSR 240-20.100(4) still refers to a "Standard Offer Contract" and its general availability to customers. The arguments set forth above in paragraph 21 apply equaling to the allegation of error contained in this paragraph 22.

23. The penalty provisions found at 4 CSR 240-20.100(8)(C) of the rule, as adopted by the Commission's June 2 Order of Rulemaking, are also unauthorized by law and are constitutionally defective.[5] This portion of the rule purports to allow the Commission to fix a penalty amount by calculating the market value for RECs or S-RECs. This language is constitutionally defective in that it violates Art. I, §31 of the Mo. Const. which provides that:

> No law shall delegate to any commission, bureau, board or other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation.

A determination of an appropriate penalty amount for violation of Proposition C or any other provision of the Missouri Public Service Commission Act, is a matter reserved by law to the courts. *See* §386.600. Although the rule adopted by the Revised Order of Rulemaking refers to any penalty payments being assessed by the courts, the rule still attempts to establish the amount of the penalty.

24. As with the June 2 Order of Rulemaking, a discrepancy in the Revised Order of Rulemaking pertains to the requirement in §386.600 that "all monies recovered as a penalty or forfeiture shall be paid to the public school fund of the state." The penalty provision of the rule and §393.1030.2(2), however, purport to divert penalties paid by electric utilities instead to the Department of Natural Resources to buy RECs or fund other selected projects. This represents an internal conflict in the enabling legislation and calls into question the validity of this aspect of the rule and, indeed, the validity of the legislation itself.

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[5] The Commission has amended this section of the rule, as purportedly adopted in its Revised Order of Rulemaking issued on July 1, 2010. Given the procedural irregularities of the Revised Order, however, MEDA sets forth it allegations of error herein with regard to the provision of the rule as adopted by the June 2 Order of Rulemaking. Some of the errors also remain in the Revised Order of Rulemaking and the rule adopted thereby.

25. The Revised Order of Rulemaking is also unlawful with regard to the computation and limitations on the retail rate impact of utility compliance with Proposition C and Commission rule 4 CSR 240-20.100. In revising the rule from that set forth in the June 2 Order of Rulemaking to that set forth in the July 1 Revised Order of Rulemaking, the Commission removed a portion of a sentence from subsection (5)(A). The removal of these few words, however, does not adequately protect electric customers from rate increases greater than the one percent cap provided for in Proposition C. Specifically, the ten year period provided for is unlawful and unreasonable, in that it is not provided for in the statute and will require arbitrary and unsupportable assumptions about regulation far into the future. Further, the rule lacks any clear and specific language establishing the methodology to compute the retail rate impact of RES compliance.

26. The Revised Order of Rulemaking also appears to contain enumeration errors or omissions. For example, as set forth in the Revised Order of Rulemaking, section 1 of the rule, which contains the definition of key terms, proceeds from subsection (A) through (D) but then jumps to subsections (J) and (K) and from there to subsections (P) through (R). Another example can be found in subsection (2) which addresses "requirements." In that section, as set forth in the Revised Order of Rulemaking, there is no subsection (A) and the sequence thereafter jumps from (B) to subsection (G). There are similar problems throughout the rule, as set forth in the Revised Order of Rulemaking, including but not necessarily limited to Sections 3, 4, 5, and 6. There is no explanation in the Revised Order of Rulemaking for any of these enumeration anomalies or omissions. These inconsistencies or omissions are at best confusing. At worst, they evidence omissions and oversights and create critical gaps in substance that could result in future problems of compliance and administration.

27. Electric utilities and their ratepayers should be excused from incurring the expense of complying with the Revised Order of Rulemaking and the RES rule adopted therein until the important legal and policy issues identified in this filing are resolved, the scope of RES obligations are settled, and the numerous procedural defects related to the Revised Order of Rulemaking have been remedied. As such, the Commission should exercise its discretion under §386.500.3 and stay the effectiveness of the Revised Order of Rulemaking and the order adopted therein indefinitely and until further order of the Commission.

WHEREFORE, MEDA respectfully requests that the Missouri Public Service Commission grant rehearing and/or reconsideration of its Revised Order of Rulemaking and Order Setting Effective Date issued herein on July 1, 2010, as requested herein, and upon rehearing and reconsideration of the issues raised herein, issue a new Order of Rulemaking consistent with this filing and the requirements of Missouri law. Additionally, MEDA requests that the Commission stay the effectiveness of its orders and the rule until such time as the issues identified herein can be reheard and resolved in a manner consistent with the language and intent of Proposition C and other relevant Missouri statutes.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission, facsimile, or email to all counsel of record on this 2nd day of July, 2010.

__/s/ Diana C. Carter_____