BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Repository File Concerning KCP&L-GMO's Submission of Its 2011 RES Compliance Plan	)))	**File No. EO-2011-0278**

COMMENTS OF RENEW MISSOURI

The Missouri Coalition for the Environment, d/b/a Renew Missouri, is pleased to offer these comments on KCP&L-GMO's RES Compliance Plan for 2011–2013, required by 4 CSR 240-20.100(7)(B).

4 CSR 240-20.100(7)(B)1.A, Planned Actions to Comply

REC banking. KCPL, GMO and Ameren all avail themselves of retroactive REC banking, claiming that they can meet the 2011 RES target with RECs they've collected since January 1, 2008. This is at odds with the meaning and intent of the RES.

"An unused credit [REC] may exist for up to three years from the date of its creation." § 393.1030.2, RSMo. On this basis GMO says that its banked RECs from the Gray County wind facility from 2008–2010 enable it to meet the requirements for 2011–2013 (compliance filing, pp. 3, 5).

However, the statute also provides: "Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales: (1) No less than two percent for calendar years 2011 through 2013…" § 393.1030.1, RSMo.

Therefore renewable energy must actually "constitute" the requisite portion of sales for a given calendar year. The REC banking provision allows leftover RECs to carry over to a

subsequent year. It does not allow old RECs to carry forward from a time when the portfolio standard did not even exist. The standards begin in 2011; therefore all RECs used for compliance must originate beginning January 1, 2011, not January 1, 2008. RECs created before 2011 could not represent energy that "constituted" a portion of sales beginning in 2011.

It also makes no sense to speak of 2008 RECs as "unused" when there was nothing in 2008 to use them on. In saying that "An unused credit may exist for up to three years from the date of its creation," the statute refers to RECs that could have been used for RES compliance but were surplus to a utility's needs in the year of their creation. The only use within the scope of the statute is use for compliance with the statute: "A credit may be used only once to comply with sections 393.1020 to 393.1030…" and, "An electric utility may not use a credit derived from a green pricing program." (§ 393.1030.2, RSMo.) "Unused" does not refer to RECs sitting in a REC bank account (something whose existence in Missouri was not even contemplated on January 1, 2008) waiting for a RES to be enacted.

The RES grandfathers in existing renewable generating assets. It does not follow that it grandfathers the energy generated in the past. The purpose of a RES is to foster renewable energy going forward. Retroactive REC banking amounts to a "time out" — based on three years of past generation, the utilities claim a right to take three years off. Those three years happen to be the first compliance period. Retroactive REC banking effectively moves that period back in time to 2008–2010, contrary to the plain numbers in the law—2011–2013.

The utilities' perverse version of REC banking is a lamentable attempt to escape the law through a loophole they have created with the flimsiest of logic.

4 CSR 240-20.100(7)(B)1.G, Environmental Impact

GMO says that it is the responsibility of the wind farm owner to ensure the absence of adverse environmental impacts and that "to its [GMO's] knowledge" the facility has received all necessary permits (compliance filing, p. 8). This hardly amounts to what the rule requires: "Verification that the utility has met the requirements for not causing undue adverse air, water, or land use impacts pursuant to subsection 393.1030.4. RSMo, and the regulations of the Department of Natural Resources."

The statute charges DNR with devising a certification process. § 393.1030.4. The DNR rule allows either the utility or the generation facility to initiate the process. 10 CSR 140-8.010(4)(C)3. This does not condone willful ignorance on the part of the utility. Evidently GMO has no idea whether the wind farm with which it has a PPA is causing undue environmental impacts or is in compliance with environmental laws.

Under the Commission rule, verification is the duty of the utility. The compliance plan should be rejected until GMO provides the necessary verification. Conclusory statements like "to its knowledge" do not amount to verification, especially when it is clear that the utility has made no inquiry but has simply assumed that the responsibility lies elsewhere.

Conclusion

Renew Missouri asks the Commission to:

- Find that retroactive REC banking is not allowed by the RES;
- Order GMO to commence the DNR certification process for its renewable energy resources or investigate whether the facility owners/operators have done so;

- Open a docket to amend the RES rule to prevent abuses such as retroactive REC banking; and
- Take whatever further action the Commission deems necessary to ensure that the compliance plan conforms to the statute and rule.

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