

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

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

Comments of General Counsel

COMES NOW the General Counsel for the Missouri Public Service Commission and offers the following comments regarding the proposed rules regarding electric utility renewable energy standard requirements:

1. On March 15, 2010, James S. Evans and others filed suit against the Missouri Public Service Commission and the Empire District Electric Company challenging the validity of Section 393.1050 RSMo. (Supp. 2009). Plaintiffs claim that Section 393.1050 is invalid and that the Missouri Public Service Commission has no authority to promulgate rules pursuant to that Section.

2. The proposed rule in this docket is the rule implementing Proposition C, found at Sections 393.1010 – 393.1030. 4 CSR 240-20.100(9) of the proposed rule restates Section 393.1050 relating to exemptions from Proposition C.

3. The undersigned suggests that the Commission amend the proposed rule to delete 4 CSR 240-20.100(9). Whether any electric utility is exempt from the renewable energy standards and this rule should depend entirely on the validity of Section 393.1050. If the Courts determine that Section 393.1050 is valid, then it will govern application of the rule to electric utilities. If the Courts determine that Section 393.1050 is not valid, then the Commission rule cannot be found to be ultra vires. Amending the proposed rule to delete paragraph 9 may also avoid any issue regarding the severability of the rule.

WHEREFORE, the General Counsel offers these comments for the Commission's consideration.

Respectfully submitted,

/s/ Steven C. Reed

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31st day of March, 2010.

/s/ Steven C. Reed