BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

COMMENTS OF RENEW MISSOURI

We thank the Commission and its Staff for many months of hard work resulting in a product of which you can be proud. Renew Missouri was a prime mover in the passage of Proposition C and is acutely aware of the difficulties the Proposition set the Commission and Staff in implementing the Renewable Energy Standard.

The Commission has had to balance many competing interests and has been largely successful in doing so. Inevitably, however, conflicting interests are reflected in the proposed rule. Most of the comments below address areas where the balancing of interests has yielded results in conflict with the statute.

SALES TO MISSOURI CUSTOMERS

4 CSR 240-20.100(2)(A) says, "an electric utility shall provide proof that the electric energy was sold to Missouri customers." The rule needs to provide for a contract path or transmission path as a means of tracking renewable energy.

SOLAR REBATE

4 CSR 240-20.100(4) imposes a 500 W minimum on customer-sited solar. There is no such minimum in the statute. Small customers should be allowed to participate in the rebate. It will likely come as a surprise, and a most unpleasant one, to any customers who are denied the rebate for this reason. In aggregate, small customer-generators could make a significant contribution to meeting the 2% solar target. We ask the Commission to remove the final clause from the introductory paragraph of 20.100(4), "and have a rated capacity of greater than or equal to five hundred (500) watts."

Most solar arrays can be expected to generate for 20 years or more. The "one-time" standard offer contract should be supplemented with an option to renew. After 10 years the customer should be allowed to apply, or be invited to apply, for another 10-year lump sum contract. The customer would have to prove that the equipment is still operational and under warranty. Since inverter warranties typically last 10 years, it would be reasonable for the utility to demand that the customer get a new inverter. We suggest that a new paragraph beaded to section (4), something along the lines of this:

"Upon expiration of the Standard Offer Contract, a customer whose equipment is still generating electricity may apply for a 10-year extension. The customer must provide proof that his original equipment and any replacement parts are in good operating condition and still under warranty for

at least the next ten years. The utility shall have the right to inspect the equipment. If the equipment, apart from no longer being new, meets the requirements of this section, the utility shall extend the Standard Offer Contract for a single 10-year period. No additional solar rebate is allowed."

RETAIL RATE IMPACT

Prop C specifies a "maximum *average* retail rate increase of one percent," determined by comparing least-cost renewable generation with the cost of nonrenewable generation, "taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation." This is not retrospective but entails an IRP-like process of devising renewable and nonrenewable portfolios.

An averaging period is essential to accommodate the spikes in RES compliance costs that arise, for example, when a large wind farm first comes online. Renew Missouri agrees that an averaging period of at least 10 years is necessary.

Indeed, 20 years would be more appropriate, since most renewable energy sources will generate for at least that long, and the RES should allow for that stream of RECs. Furthermore, 20 years is the IRP planning horizon; making the RES compatible with the IRP would achieve economies in planning. Finally, 20 years would virtually cover the life of the RES — 10 years to ramp up to 15% renewables and 10 years to amortize most if not all of the investments that would bring new generation into service through 2020. Beyond that, new investments would only be needed to maintain 15%, with minimal, and probably negative, rate impact.

However, we have difficulty interpreting 4 CSR 240-20.100(5)(A), which says that renewable additions shall be considered "on an incremental basis," excluding "renewable energy resources previously determined not to exceed the one percent (1%) threshold." If, after the first 10-year period, only new increments of renewables are to be averaged over the next 10 years, then it looks like the utilities are effectively entitled to a 1% rate increase every 10 years as a result of the RES.

The plain meaning of Prop C is that any rate increase caused by Prop C can never at any time exceed 1% of what rates would otherwise be. In other words, the renewable revenue requirement must never, on average, be more than 1% of the nonrenewable revenue requirement consisting of the baseline, pre-RES revenue requirement plus the Prop C nonrenewable revenue requirement.

Prop C does not allow a rate increase more frequently than the life of the RES. To say otherwise would be reading into the law something that isn't there.

The only possible authority for such increases is § 393.1045, RSMo, which would allow retail rate increases as often as annually. But 393.1045 does not apply, for two reasons:

- Prop C, in § 393.1030.2, gives the Commission the authority to "make whatever rules are necessary to enforce the renewable energy standard." The RES is defined by § 393.1020 (part of Prop C) as follows: "Sections 393.1025 and 393.1030 shall be known as the

'Renewable Energy Standard.'" Therefore § 393.1045 is not part of the RES that can be enforced through the Prop C rulemaking.

- Section 393.1045 is not a valid law. The reasons for this are given below.

SECTIONS 393.1045 AND 393.1050 ARE INVALID

The final rule refers in several places to § 393.1045. See 4 CSR 240-20.100(6), (6)(B)2, (6)(C)1. It also grants an exemption from the solar requirements of Prop C to an unnamed utility that happens to be Empire District Electric, citing § 393.1050. 4 CSR 240-20.100(9).

These two laws are not parts of the RES. They were enacted as parts of SB 1181, passed on May 16, 2008 with an effective date of August 28, 2008.
http://www.senate.mo.gov/08info/BTS_Web/Actions.aspx?SessionType=R&BillID=144166

Meanwhile, Proposition C was approved for circulation by the Secretary of State on Feb. 4, 2008. http://www.sos.mo.gov/elections/2008petitions/08init_pet.asp The electorate passed it on Nov. 4, with 66% voting in favor.

Both these sections of SB 1181 purported to amend Prop C before it even passed. The voters were not given their say on these amendments.

The Commission is not a court and cannot declare a statute invalid. However, an administrative agency can't avoid interpreting the law that applies to it. "Where an agency of the state such as the P.S.C. is charged with enforcement of a statute, the construction given that statute by the agency is entitled to some weight regarding its interpretations." *State ex rel. Gulf Transport Co. v. PSC*, 658 S.W.2d 448 (Mo.App. WD 1983). The agency's interpretation of the law is not binding on the courts, which will review it *de novo. Oakland Park Inn v. Director of Revenue,* 822 S.W.2d 425 (Mo. Banc 1992). The agency therefore has the authority to interpret the law, subject to judicial review. *Bridge Data Co. v. Director of Revenue,* 794 S.W.2d 204, 207 (Mo. Banc1990).

Both 393.1045 and 393.1050 are irreconcilable with Prop C.

- Section 393.1045 says the utilities may get a 1% annual rate increase as a result of the RES; Prop C permits a rate increase of no more than 1% over the life of the RES.

- Prop C applies to all electrical corporations, including Empire District; § 393.1050 tries to exempt Empire from the solar energy target and solar rebate.

When two laws are in irreconcilable conflict, the later of the two repeals the earlier by implication. *Morrow v. City of Kansas City,* 788 S.W.2d 278, 281 (Mo. Banc 1990). When the voters passed Prop C on Nov. 4, 2008, they repealed §§ 393.1045 and 393.1050.

The RES rules cannot enforce both Prop C and §§ 393.1045 and 393.1050. The Commission has to choose. The legally correct path is clear. The parts of the rule based on the two invalid laws must be removed.

We ask the Commission to rewrite 20.100(5)(A) and (D) to clarify that retail rates may not increase by more than 1% over the life of the RES, and to remove 20.100(9) and all reference to either 393.1045 or 393.1050.

CARBON COST

4 CSR 240-20.100(5)(B) allows two methods for valuing the risk of greenhouse gas regulation: either allowance prices or control technology. There are a few regional carbon markets that might provide useful price information, but there is no national market yet. As for technology, the only one on the horizon is CCS, and it is not market-ready.

Various utility commissions, in the context of RES or demand-side programs, have developed methodologies for calculating a carbon cost, often by means of an adder (either a dollar amount or a percentage of nonrenewable avoided costs). This approach should be considered as well. The Commission will have to deal with avoided carbon costs in connection with the SB 376 demand-side rulemaking. A workshop docket on carbon pricing for the RES could serve as a dress rehearsal; or a common docket for the RES and SB 376 might satisfactorily kill two birds with one stone.

RENEWABLE AND NONRENEWABLE REVENUE REQUIREMENTS

The method for determining revenue requirements for purposes of calculating the rate impact, as set forth in 4 CSR 240-20.100(5)(B), uses and "incremental" approach, in keeping with the 10-year rate increases apparently allowed in (5)(A) and (D). Accordingly, this needs to be revised. We have alternative language to propose for this section, which we add to these comments as an Appendix.

FEDERAL RES COMPLIANCE

4 CSR 240-20.100(5)(E) allows all costs and benefits of compliance with federal renewable energy requirements to be considered as part of compliance with Prop C. We agree with the Union of Concerned Scientists that federal compliance costs (and benefits) should not count if achievement of the federal requirements does not contribute to compliance with Prop C. For example, if an eligible technology for purposes of a federal RES is not eligible in Missouri, or the energy is not delivered here, then federal compliance should not count.

COST RECOVERY

4 CSR 240-20.100(6)(A)6 requires the utilities to giver initial and annual notices and a line item on customer bills stating "the presence and amount of the RESRAM." We think the initial notice

should suffice. As to the line item, are customers to be told the total amount of the RESRAM or their individual share of it? The former seems out of place on a bill; the latter is unnecessary.

We expect the RES to result in small bill increases in the short-term and reductions in the out years. Transparency is good, but we don't see why renewable generation should be singled out for line item treatment. If a utility builds a nuclear plant, let nuclear generation be given the same treatment. We ask the Commission to drop at least paragraphs 6.B and 6.C, since other rate cases besides RESRAMs and other generation types are not similarly itemized.

PROCEDURAL SCHEDULES

The RESRAM schedules in 20.100(6)(B & C) do not include a schedule for what happens if the Commission rejects a RESRAM. In 20.100(6)(C)1 the utility is allowed to file new rate schedules, which presumably starts the process all over again.

We believe an expedited schedule is in order. If the Commission rejects the proposed RESRAM, the rule should provide for a final resolution of the case within, e.g., 60 days. For the fast-track RESRAM in 20.100(6)(B)(less than 2% increase in revenue requirement) the deadline could be reduced to 30 or 45 days.

The rule provides for Staff determination of the REC value used for assessing penalties for noncompliance. 20.100(8)©. Interested parties are allowed to comment, but there is no provision for opening a case and giving notice. We ask that this be included.

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Certificate of Service

Copies of these comments have been served electronically on the Commission's General Counsel and OPC this 5th day of April, 2010.

/s/ Henry B. Robertson

APPENDIX

(5) Retail Rate Impact.

(A) A maximum average annual retail rate increase of one percent (1%) shall be allowed for prudent costs directly attributable to RES compliance. The average annual retail rate increase shall be calculated based upon an averaging period of at least ten years projected forward from the current calendar year. This calculation is intended to be consistent with integrated resource planning under 4 CSR 240-22.

(B) Within 90 days of the enactment of this rule and thereafter with its annual RES Compliance Plan, each utility shall submit a filing consistent with the requirements of this section. The utility shall fully disclose to interested parties all aspects and assumptions included in its calculations pursuant to this section, including the range of inputs used in its modeling runs. The utility shall provide sufficient access to its modeling program and software used to make its calculations and estimates of hypothetical rate impacts in order to allow interested parties the opportunity to analyze alternative modeling runs. All calculations, modeling, and assumptions shall be subject to the review and approval of the Commission.

(C) Each utility shall estimate its least cost renewable generation as follows:

1. The utility shall identify all eligible renewable energy resource alternatives commercially available to it through ownership, power purchase agreements, or purchase of RECs.

2. The utility shall screen these resource alternatives based upon annualized costs. Installed capacity costs and fixed and variable O&M costs shall be levelized over the useful life of a resource. Capital costs will be given less anticipated depreciation. The utility shall indicate which resource alternatives are considered candidates for its RES compliance portfolio and, if it has eliminated any alternatives, provide a detailed explanation for elimination.

3. The utility shall assemble various combinations of eligible renewable resources for the purpose of determining the lowest cost RES compliance portfolio that will meet but not exceed the RES targets. The utility shall use load projections in its calculations that are reasonably anticipated based upon its most recently accepted Integrated Resource Plan, unless a more accurate assessment has since been found. The utility shall exclude from its calculation nonrenewable generation that is not needed to meet anticipated load requirements for each of the years after taking into account the required increment of renewable generation.

4. The utility shall assess the relative performance of its portfolios by calculating the value for each of the following performance measures: present worth of utility revenue requirements, including rebate costs and program administration costs, and levelized average rates. Administration costs shall be capped at five percent of total annual costs. The analysis shall cover a planning horizon of at least ten years. All present worth and levelization calculations shall use the utility discount rate and costs shall be expressed in nominal dollars.

5. The utility shall deduct from its rate impact calculations all additional costs associated with achieving any federal renewable energy standard.

6. The portfolio that achieves the lowest average rate will be used for the forward comparison of rate impacts.

(D) The cost of continuing to generate or purchase electricity from entirely nonrenewable sources shall be determined by adding:

1. The cost of service most recently approved by the commission for the utility, exclusive of the cost of service associated with RES compliance;
2. Cost of service changes since the approval of the utility's revenue requirement, exclusive of cost of service changes associated with RES compliance
3. The present value of the potential revenue requirement impact associated with the incremental addition of RES-ineligible generating resources, both owned and purchased, from the preferred plan adopted in the utility's most recent Chapter 22 integrated resource planning filing, that would correspond to the applicable RES requirements for each year in the RES planning horizon;
4. The quantified probable cost of compliance with future environmental regulations, derived from modeling a range of reasonably probable costs, averaged over the same RES planning horizon used in the calculations for subsection (C), including greenhouse gas regulations, for each type of nonrenewable generation.

(E) The average retail rate impact as determined under (5)(C) should not exceed 1% of the average retail rate impact determined under (5)(D).

(F) If the calculation shows that the utility has a substantial risk of the hypothetical average rate impact to consumers under Scenario 1 being greater than one percent over the hypothetical rate impact to consumers under Scenario 2, then the utility may at the time of its compliance or IRP filing petition the Commission for a hearing to review the plan and the utility's calculations. The Commission shall determine if the utility's conclusions are accurate and the course of action that should be taken to meet the requirements of the RES. The Commission may order the utility to use different models, different modeling assumptions, revise its plan to implement the RES, use a course of action that implements the full compliance of the RES with lowest cost renewable resources regardless of source, and make such other orders as at deems appropriate to meet the requirements of the RES. The Commission shall take into account the ability of rates to be passed through and carried forward under the pass-through mechanism established in subsection (6).