BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

COMMENTS OF AMERENUE

AmerenUE is appreciative of the opportunity to provide comments on the Commission's proposed amendments to 4 CSR 240-3.156 and 4 CSR 240-20.100, which would implement the provision of Proposition C (Section 393.1030 RSMo). The Company has been an active participant in the rulemaking workshops organized by Staff to address this rulemaking, and has worked with all parties to find areas of common agreement. The goal of all parties is to establish practicable and workable rules that advance the use of renewable energy in Missouri as contemplated by Proposition C, and to ensure that goal is met in the most reasonable and efficient manner.

As drafted, however, AmerenUE has several concerns with the proposed rules. These concerns fall into three general categories:

1. First, the proposed rules create inefficiencies that will unnecessarily hamper the development of renewable energy. These inefficiencies will ultimately result in higher costs for customers or, if the statutory 1% cap on costs is enforced, will result in the development of fewer renewable resources, contrary to the goal of Proposition C.

2. There are several problems with the cost recovery provisions of the rules that should be corrected to ensure that (a) utilities timely recover their full cost of compliance, and (b) the impact on customers' rates is actually limited to 1% as contemplated by Proposition C.

3. And finally, there are a few miscellaneous changes that are required to make the proposed rules more workable and effective.

Inefficiencies Embedded in the Proposed Rules

Where compliance with Proposition C requires the construction of renewable generation, the most efficient and effective method of achieving compliance will often be through the development of large-scale projects constructed and owned by the utility. Just as customers ultimately benefit when utilities construct and own non-renewable sources of generation (rather than purchasing power at market prices from non-regulated generators), customers will benefit if utilities develop their own renewable resources, rather than relying on purchasing renewable power or renewable energy credits (RECs) provided by third party suppliers outside the Commission's jurisdiction. However, the terms of the proposed rules provide unnecessary and inappropriate disincentives for Missouri utilities to develop large-scale renewable projects, and improperly favor and in some cases subsidize renewable projects developed by third parties.

Most significantly, 4 CSR 240-20.100(2)(G) imposes burdensome requirements for a utility to hire an independent auditor to review the "fairness of the acquisition process" whenever the utility elects to develop its own renewable energy resources. The independent auditor is required to have unfettered access to the utility's personnel and computer models, conduct an exhaustive analysis, and file a report with the Commission to determine the fairness of the process through which the utility decided to develop its own renewable resources, all before the project is initiated. After the independent auditor's report is filed, third party bidders who had proposed other alternatives and other

interested parties are given the opportunity to review and comment on the independent auditor's report.

This is a completely unnecessary process which will impose an extra layer of costs and significant administrative burden on any project developed by a utility, as well as the Commission. It invades the province of utility management, and provides a material advantage to projects offered by third party developers over projects developed by the utility. Moreover, it is a sharp departure from the normal process a utility goes through when building or acquiring a generation asset. Currently, utilities are responsible for making prudent decisions when constructing or purchasing new generation assets, but the Commission and other parties are not direct participants in the utility's decision-making process.[1] The Commission reviews the utility's decisions after the fact to determine whether the decisions were prudent, and any costs that were imprudently incurred are disallowed. This time-tested process is used when utilities make huge investments in baseload generating facilities, and it is certainly sufficient to ensure that utilities make prudent decisions regarding much smaller renewable generation projects. There is simply no reason for the Commission to directly participate in management decisions through this inefficient process, and there is certainly no reason for other interested parties, including unsuccessful bidders promoting alternative projects, to be allowed to do so. As a consequence, Section 2(G) of the proposed rules should be deleted in its entirety.

A second type of inefficiency embedded in the proposed rules involves restrictions on the use of RECs for compliance with Proposition C. The statute provides that "A utility may comply with the standard in whole or in part by purchasing RECs."

[1] In fact, the Commission is not lawfully permitted to participate in the management of a utility. CITE.

Section 393.1030(1) RSMo. However, the proposed rules contain several restrictions on the use of RECs that prevent utilities from using them in the most efficient ways for compliance, none of which were contemplated by the statute. For one thing, the rules do not appear to recognize the fact that RECs are by definition severable from the electricity whose generation created them. Specifically, Section 2(A) of the rules only permits the use of a REC for compliance if the generation facility is located in Missouri or if the renewable energy resource (i.e. electricity) is sold to Missouri electric energy retail customers.

This provision of the rule, which ties the use of RECs to the underlying electricity, is inconsistent with the reason RECs were created and how they function today. RECs were explicitly created as a mechanism to unbundle the environmental and social attributes of renewable generation from the electricity itself. The United States Environmental Protection Agency's (EPA) definition of REC explicitly recognizes this separation. "A REC represents the property rights to the environmental, social and other non-power qualities of renewable electricity generation. A REC, and its associated attributes and benefits, can be sold separately from the underlying physical electricity associated with a renewable-based generation source."[2]

"All grid-tied renewable-based electricity generators produce two distinct products:

- Physical electricity
- RECs

At the point of generation, both product components can be sold together or separately, as a bundled or unbundled product. In either case, the renewable generator feeds the physical electricity onto the electricity grid, where it mixes with electricity from other generation sources. ***Since electrons from all generation sources are indistinguishable, it is impossible to track the physical electrons from a specific point of generation to a specific point of use.***

[2] http://www.epa.gov/greenpower/gpmarket/rec.htm

As renewable generators produce electricity, they create one REC for every 1000 kilowatt-hours (or 1 megawatt-hour) of electricity placed on the grid. If the physical electricity and the associated RECs are sold to separate buyers, the electricity is no longer considered "renewable" or "green." ***The REC product is what conveys the attributes and benefits of the renewable electricity, not the electricity itself.***

RECs serve the role of laying claim to and accounting for the associated attributes of renewable-based generation. The REC and the associated underlying physical electricity take separate pathways to the point of end use. As renewable generators produce electricity, they have a positive impact, reducing the need for fossil fuel-based generation sources to meet consumer demand. RECs embody these positive environmental impacts and convey these benefits to the REC owner."[3]

This portion of the rules is also inconsistent with the express language of Proposition C, which allows a utility to purchase RECs instead of purchasing electricity from a renewable generator in order to comply with the requirements of the law. If the intention were only to permit the use of renewable energy, then the statute would not have contained this language allowing the separate use of RECs. Other states which have renewable portfolio standards (RPS) also recognize that RECs are separate from electricity and must be treated as such. Currently, 30 states and the District of Columbia have RPS and allow for the utilization of RECs separately from electricity.

Other portions of the proposed rules seem to indicate that the REC may be purchased separate from the electricity. For example, the definition of a REC appears to recognize that a REC is severable from the electricity itself. *See* 4 CSR 240-20.100(1)(J). Additionally, 4 CSR 240-20.100(4)(H), which provides for the purchase of solar RECs from customers who install solar panels anticipates the separation of the REC from the energy. This is no different from how utilities use SOx and NOx certificates, separate from energy, for compliance with the Clean Air Act.

[3] Id. Emphasis added.

As a consequence, the proposed rules should be revised to make it clear that RECs may be purchased independent of purchasing the underlying electricity, and regardless of where the underlying electricity is ultimately sold or delivered.

A second, somewhat related problem with the treatment of RECs in the proposed rules is that the rules attempt to geographically limit the location of generators from which RECs may be purchased to those located in Missouri and its environs, even though Proposition C contained no such restriction. This is an inappropriate and inefficient restriction on RECs that will ultimately increase costs for customers or limit the development of renewable resources. Renewable generation is designed to address *global* climate change, which is not a local problem to Missouri or the Midwest. If verifiable RECs can be purchased at a lower cost from another location, Missouri utilities should be encouraged to purchase them, to reduce the overall cost of compliance for customers, and to facilitate the greatest development of renewable resources in the most optimal locations.

If the Commission nonetheless decides to retain some geographic restriction for RECs, it should not tie the restriction to the sale or delivery of electricity. Instead, the restriction limitation should be to RECs generated by plants located in Missouri or plants that have the capacity to deliver electricity into any regional transmission organization having a Missouri electric utility as a member. Accordingly, any Missouri utility could purchase RECs generated by plants located in Missouri, in the Southwest Power Pool area or in the Midwest Independent Transmission System Operator area. This will eliminate the difficult task of tracking sales or delivery of particular packages of

electricity, and will eliminate the inappropriate tie between RECs and electricity that the proposed rules currently make.

A third REC-related inefficiency in the proposed rules is the requirement that electric utilities offer a one-time lump sum payment, called a "Standard Offer Contract" for 10 years of solar RECs (S-RECs) at an unspecified fixed price, from any retail account holder who installs a solar electric system on his premises. 4 CSR 240-20.100 (4)(H). The problems with this provision are numerous:

a. It is completely unauthorized by and beyond the scope of Proposition C, which does not even mention the purchase of S-RECs from customers;

b. It creates an inefficiency by requiring electric utilities to purchase 10 years of S-RECs from a source which is unlikely to be the lowest cost source of S-RECs or solar generation;

c. It inhibits the electric utility's ability to plan solar projects, since the electric utility will never know how many customers may want to take advantage of the Standard Offer Contract in any particular year; and

d. In combination with the solar rebate mandated by Proposition C, and federal tax incentives, it may contribute to a total subsidy that actually exceeds the cost of installing solar generating facilities, creating perverse incentives for residential customers to install facilities which may be uneconomic.

For all these reasons, the requirement for utilities to purchase S-RECs for 10 years should be eliminated from the rule. Utilities should be permitted, but not required to purchase S-RECs from their customers at prices and terms acceptable to both parties if those S-RECs are needed by the electric utility to meet the requirements of Proposition C.

If the Commission nonetheless elects to retain the Standard Offer Contract requirement, it should substantially shorten the period the electric utility is required to purchase S-RECs, and establish a fair process for determining a price to be paid for the S-RECs. Since there is no transparent market for S-RECs in Missouri, it is difficult to imagine how that price will be set, but the Commission must address this issue. Arguably the price paid to customers for S-RECs should be no higher than the lowest priced S-REC available anywhere else in the country.

If the Standard Offer Contract requirement is retained, electric utility planning will necessarily be adversely impacted. Since the utility will not know how many customers will install solar facilities in any year, it will have to make other arrangements to meet the solar requirements of Proposition C to avoid incurring penalties. This could involve constructing utility-owned solar facilities or purchasing S-RECs from third party solar generators. Then, when and if residential solar generation materializes, the electric utility will have over-complied. The rule should address exactly how and when the cost of such over-compliance will be recovered.

Cost Recovery Issues

AmerenUE notes that a number of cost recovery issues that AmerenUE previously brought to the Commission's attention have been addressed in the proposed rule. The current rule eliminates much of the uncertainty concerning cost recovery that was in previous drafts. However, there are still some cost recovery issues remaining.

First, although Proposition C contemplates a *total* maximum average retail rate increase of 1%, it appears that the proposed rules contemplate an increase of 1% *per year*. The rule should be modified to be consistent with Proposition C in this regard.

Second, the proposed rules mandate a convoluted and complex method for calculating the 1% cap over a 10-year period. The required calculation involves speculative estimates of costs and benefits up to 10 years into the future which are necessarily unreliable and subject to challenge. Moreover, this process may result in rates that are considerably in excess of the 1% cap if estimates don't ultimately turn out to be correct. The Commission should adopt a more straightforward method of calculating the cap, such as multiplying the revenue requirement determined in the utility's last rate case by 1%.

If the Commission retains the complex method of calculating the cost of renewable power, the cost of the renewable generation should be netted against the cost of purchasing power over a one year forward looking period (if any additional power would have been required by the electric utility in the absence of Proposition C). This provides a more objective comparison that is easier to calculate and less subject to dispute. Short term forward power price curves are commonly used, and they assume the market's assessment of the likelihood and impact of greenhouse gas emissions legislation and other risk factors. The projections of these prices into the future become more speculative as year after year of assumptions are made. Limiting any projection to a maximum of one year curtails the amount of speculation necessary for rate purposes.

A third cost recovery issue is that the rule appears to be one-sided in that it requires the electric utility to pay interest to customers at its short-term borrowing rate where it has over-collected its costs of compliance, but it is not permitted to collect interest where its cost of compliance is carried forward due to the 1% cap. 4 CSR 240-20.100(6)(A)(3) should be modified to allow the electric utility to accrue interest at its

short-term cost of borrowing on any compliance costs that are carried forward to a subsequent period.

The final issue related to cost recovery is an addition that AmerenUE would add as 4 CSR 240-20.100(2)(H). The Commission should add language to make it clear that these regulations are not intended to prevent a utility from installing renewable generation which is a prudent addition to the utility's generation fleet, even if that addition is not necessary for compliance with Proposition C. The percentages contained in the statute and in this rule are not maximums but rather are minimums and if a utility, in its Integrated Resource Plan or through some other planning mechanism, determines that adding a renewable generating unit is prudent, the utility should still be able to make that investment without putting the recovery of that cost at risk merely because it wasn't used to comply with Proposition C.

The language of Proposition C is somewhat inconsistent in that it uses future projected costs of various factors (ie, the cost of compliance with carbon legislation) to figure out what a 1% cap equates to for a utility's rates. This introduces a large amount of uncertainty and opportunity for second guessing in a rate case, which typically sets rates using a historic test year. In order to offset this uncertainty, the Commission rules should allow the utility to seek Commission determination that the utility's proposed compliance method is appropriate prior to the utility committing to construct a renewable generating asset or to entering into a purchase power agreement from a renewable generator.

Miscellaneous

4 CSR 240-20.100(3)(F) and (G) discuss requirements to use a Commission designated common central third-party registry to track RECs. AmerenUE would propose modification of this language to not require the use of a third party to track utility generated and retired RECs. This addition is to eliminate unnecessary administrative fees. The Commission has chosen APX, Inc. as the company which will track RECs for compliance with Proposition C. The Company understands that APX requires a one-time fee for the registration of renewable generators. Depending on generator size, that fee ranges from $50 to $3000. In addition, APX charges volumetric fees as follows:

- Issuance Fee: $0.05 per REC issued
- Transfer Fee: $0.01 per REC transferred
- Retirement Fee: $0.10 per REC retired

For renewable generation assets that are owned by the utility, used to comply with Proposition C, these fees represent unnecessary expenditures. As written, a utility would be required to pay the Issuance Fee and the Retirement Fee for every REC associated with generation from one of its own renewable generating facilities. This would add approximately $0.15 per REC to the cost of complying with Proposition C without adding any renewable generation to utility's mix. This cost could easily exceed $100,000 for additional, unnecessary administrative costs each year. This seems counterproductive to the intent of Proposition C. The Commission relies on the records kept by electric utilities for numerous other purposes and should rely on the utility to keep accurate records in this case as well. Consequently, the Commission should exempt utility owned renewable generation assets from registering with APX.

This request is no different than how the rule treats S-RECs purchased from utility customers. The rule does not require any S-RECs purchased under any standard contract offer be required to register with APX. RECs from utility owned generation should be treated in the same manner.

4 CSR 240-20.100(7)(B)(1)(G) sets forth a requirement that the utility verify that the source of the RECs purchased as part of compliance with the law did not cause undue adverse air, water or land use impacts. AmerenUE believes this requirement should be eliminated in its entirety.

Requiring electric utilities to verify the environmental impact of generating assets over which they have no control goes beyond what the Commission should require. The existing permitting process requirements, whether federal, state or local, related to the construction of a renewable generating facility already address these issues. If there are additional environmental controls necessary, it is not the job of this Commission to impose them through the back door of this rule. Finally, there is no reason to believe that AmerenUE or any other electric utility will have any knowledge as to what adverse impacts did or did not occur, leaving the utility unable to provide the required verification.

4 CSR 240-20.100(8) subjects an electric utility to penalties of at least twice the average market value of RECs or S-RECs for the year in which it failed to meet the targets of the rule. The rule does not state how the "market value" of RECs or S-RECs would be determined. RECs are not a traded in a liquid market and the price of RECs will vary widely. Rather than leaving this factor as an unknown, the rule should require Staff to recommend a market value for RECs and S-RECs, and for the Commission to

adopt a market value for each prior to each year. Without knowing these values, the utility cannot know if mitigation efforts are reasonable. In addition, since the Commission lacks authority to assess penalties or award pecuniary damages the rules should be modified to require the Commission to pursue penalties in circuit court, similar to other penalty actions under the Public Service Commission Act.

AmerenUE appreciates the Commission's consideration of these comments and looks forward to participation in the hearing scheduled in this matter.

Respectfully submitted,

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d/b/a AmerenUE

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CERTICATE OF SERVICE

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