

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

Earth Island Institute d/b/a)	
Renew Missouri, et al.,)	
)	
Complainants)	
)	
v.)	Case No. EC-2013-0378
)	
The Empire District Electric Co.,)	
)	
Respondent.)	

**SUGGESTIONS IN SUPPORT OF RENEW MISSOURI'S
MOTION TO COMPEL FILING OF TARIFF SHEETS**

COMES NOW the Office of the Public Counsel ("Public Counsel" or "OPC") and in response to the Motion to Compel Filing of Tariff Sheets and Motion for Expedited Treatment filed by the Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), and consistent with the Commission's subsequent Order Directing Response, states as follows:

Background

On November 26, 2013, this Commission resolved Count III of Renew Missouri's complaint in favor of the Empire District Electric Company ("Empire") and against Renew Missouri.¹ Therein, the Commission made one factual finding and several conclusions of law denying Renew Missouri's request for relief. As to the factual finding, the Commission noted that Renew Missouri alleged, and Empire admitted, the following:

Empire relies on Section 393.1050, RSMo (Supp. 2012) to claim that it is exempt from all solar requirements under the RES [Renewable Energy Standard] statute, including its obligation to

¹ Order Denying Motion for Summary Determination of Renew Missouri and Granting Motions to Dismiss of Ameren Missouri and Empire, Case No. EC-2013-0377, et al (November 26, 2013) (Doc. No. 61).

pay solar rebates and its obligation to obtain two percent of its renewable energy portfolio requirement from solar energy.²

Subsequent to the order, Renew Missouri filed a timely motion for rehearing, which was denied and a timely appeal. In finding against Renew Missouri, the Commission determined that: 1) the General Assembly had authority to pass § 393.1050, RSMo while an initiative petition was pending before the voters, 2) § 393.1050 was not in irreconcilable conflict with any provision of Proposition C, and 3) to the extent § 393.1050 is a special law, there was a substantial justification for the class created by the statute and the treatment afforded the class in the law.³ On appeal, the Missouri Supreme Court resolved the issue “whether the legislature may negate in advance an initiative petition that has been approved for circulation but prior to the time it is adopted by the people at an election.”⁴ By a 5-2 vote, the Court determined that the legislature lacks such authority.⁵ Moreover, the Court determined that where the General Assembly enacts such a statute and the proposed initiative is later adopted by the people at an election, the General Assembly’s statute is repealed by implication to the extent the two are in conflict.⁶ Finally, the court determined § 393.1050 to be in conflict in its entirety with Proposition C as passed by the people in November, 2008.⁷ In sum, the Court reversed the determination of the Commission.

² *Id.* at 5.

³ *Id.* at 8-11.

⁴ *Earth Island Inst. v. Union Elec. Co.*, 2015 Mo. Lexis 15 at 3-4 (Feb. 10, 2015).

⁵ *Id.* at 11-22.

⁶ *Id.*

⁷ *Id.*

Argument

As to Count III of its complaint, the relief sought by Renew Missouri was for the Commission to determine that “Empire is not exempt from the solar requirements of the RES, and [to] order Empire to comply with such requirements.”⁸ The undisputed material fact as found by the Commission and conceded by Empire is that Empire has not been complying with the RES solar requirements due entirely to its (good-faith) belief that it was exempted from those requirements by operation of § 393.1050.⁹ The Supreme Court has made clear that Empire does not enjoy such an exemption.¹⁰ Renew Missouri having prevailed as a matter of law, and without any material fact in dispute, the case is ready for the Commission to enter the relief requested by the Complainant.

And the relief requested by Renew Missouri is squarely within the Commission’s authority to order. The Commission once again has jurisdiction over this complaint case on remand.¹¹ And a complaint may be brought against a utility “setting forth *any* act or thing done or omitted to be done...in violation, or claimed to be in violation, of any provision of law...” (emphasis added).¹² Further, the Commission enjoys broad authority to regulate the terms and conditions of service provided to customers by investor-owned utilities. Mo. Rev. Stat. §§ 386.010, *et seq.*, and 393.010, *et seq.* Finally, the RES law empowers the Commission to enact mandatory rules regarding the “portfolio requirement for all electric utilities to generate or

⁸ Formal Complaint, Case No. EC-2013-0378, p. 11 (Jan. 30, 2013) (Doc. No. 1).

⁹ *See supra*.

¹⁰ *Earth Island Inst.*, 2015 Mo. Lexis 15 at 3-4.

¹¹ *City of Joplin v. Pub. Serv. Comm’n*, 186 S.W.3d 290, 293 (Mo. App. W.D. 2005).

¹² Mo. Rev. Stat. § 386.390.1 (2000 & Supp.).

purchase electricity generated from renewable energy sources,” which the Commission has done.¹³ Indeed, within the Commission’s existing rules, the Commission makes clear that:

Pursuant to section 393.1030, RSMo, and this rule, electric utilities shall include in their tariffs a provision regarding retail account holder rebates for solar electric systems. These rebates shall be available to Missouri electric utility retail account holders who install new or expanded solar electronic systems that become operational after December 31, 2009.¹⁴

The Commission can order the relief requested by Renew Missouri.

With regard to rebates, under current law customers owning solar installations up to 25 kilowatts which are confirmed by the utility to be compliant with Missouri’s net metering law, § 386.890, and which are “operational on or before June 30, 2014,” receive a \$2.00 per watt rebate.¹⁵ For compliant solar installations “operational between July 1, 2014 and June 30, 2015,” customers will receive a \$1.50 rebate.¹⁶ Finally, for complaint solar installations “operational between July 1, 2015 and June 30, 2016,” customers will receive a \$1.00 rebate.¹⁷ As a result, time is of the essence in order for Empire customers to receive the benefit of the rebates the law intends for them, and has always intended for them, to have if they choose solar.

The prayer for relief articulated in Renew Missouri’s Complaint is a simple one – order Empire to comply with the RES requirements. Assuming that Empire will not promptly file a tariff absent an order from this Commission, Renew Missouri’s Motion to Compel is entirely appropriate in the wake of the Supreme Court’s decision. Public Counsel urges the Commission

¹³Mo. Rev. Stat § 393.1030 (Supp. 2013); 4 CSR240-20.100, *et seq.*

¹⁴4 CSR 240-20.100(4).

¹⁵ Mo. Rev. Stat. § 393.1030.3 (Supp. 2013).

¹⁶*Id.*

¹⁷ *Id.* (stating further that rebates will continue to phase out until June 30, 2020).

to grant Renew Missouri's Motion, issue a final order in this case resolving Count III of the complaint in favor of Renew Missouri, and order Empire to file tariff sheet's consistent with its requirements under the law without further delay on or before April 15, 2015.

Conclusion

WHEREFORE the Office of the Public Counsel prays the Commission to grant the pending Motion to Compel Filing of Tariff Sheets and Motion for Expedited Treatment.

Sincerely,

/s/ Dustin J. Allison

Dustin J. Allison
Acting Public Counsel
Mo. Bar No. 54013

Office of the Public Counsel
200 Madison Street
PO Box 2230
Jefferson City, MO 65102
(573) 751-4857
Dustin.Allison@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail to all parties of record on this 8th day of April, 2015.

/s/ Dustin J. Allison

Dustin J. Allison