BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

COMMENTS OF THE STAFF

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), through the Staff Counsel's Office, and offers the following comments regarding the proposed rules regarding electric utility renewable energy standard requirements:

1. Attached as Appendix 1 are the comments of the Staff technical experts Michael Taylor and Mark Oligschlaeger. Mr. Taylor has degrees in Mechanical Engineering and Engineering Management and Mr. Oligschlaeger is a Certified Public Accountant. Their credentials are attached as Appendix 2 and Appendix 3, respectively.

2. On March 31, 2010, the General Counsel for the Missouri Public Service Commission ("General Counsel") filed comments regarding proposed subsection 4 CSR 240-20.100(9). The Staff concurs in those comments. The Staff also notes that a revision of 4 CSR 240-20.100(11)(C) is required. The Staff proposes the following substitute language: "The commission may not waive or grant a variance from any section of this rule that implements the specific requirements of Proposition C, adopted by Initiative, November 4, 2008."

3. The General Counsel in his March 31, 2010 filing noted that James S. Evans and others (certain individuals and Power Source Solar, Inc. a for-profit Missouri corporation headquartered in Springfield, Missouri) filed suit against the Missouri Public Service Commission ("Commission") challenging the validity of Section 393.1050 RSMo. Cum. Supp. 2009, the solar exemption section applicable to The Empire District Electric Company. The suit is Case No. 10AC-CC00179 and is a declaratory judgment action in Cole County Circuit Court.

The Plaintiffs seek that the Cole County Circuit Court issue a declaratory judgment that Section 393.1050 is invalid and that the Commission has no authority to promulgate any rule to implement Section 393.1050.

4. The Petition for Declaratory Judgment And Other Relief states that on May 4, 2008, the Secretary of State took delivery of petitions containing a number of signatures that proved sufficient to qualify for the November 4, 2008 ballot, an initiative petition, Proposition C, that would establish by statute a "Renewable Energy Standard." The Plaintiffs' Petition in Cole County Circuit Court further states that on September 9, 2008, the Secretary of State certified the sufficiency of the petition to be placed on the November 4, 2008 ballot. The Plaintiffs' Petition relates that on or about May 16, 2008, the Missouri General Assembly enacted Senate Bill No. 1181, Laws 2008 with an effective date of August 28, 2008 containing provision Section 393.1050.

5. Plaintiffs' Petition Count I – Lack of Legislative Authority claims that Section 393.1050 is invalid because, after Proposition C had been approved for circulation and sufficient signatures submitted to the Secretary of State, but before it had been voted on at the general election, the General Assembly lacked the power to amend and modify the initiative.

6. Plaintiffs' Petition Count II – Repeal by Implication claims that Proposition C and Section 393.1050 are in irreconcilable conflict, and since Proposition C was passed later, it repealed Section 393.1050 by implication.

7. Plaintiffs' Petition Count III – Unconstitutional Special Law claims that since there is no rational basis for exempting Empire from the solar requirements made applicable to other electrical corporations by Proposition C, Section 393.1050 is an unconstitutional special law contrary to Missouri Constitution, Article III, Sections 40(28) and 40(30).

8. Although Plaintiffs only directly address Section 393.1050 with their March 15, 2010 Declaratory Judgment action, they indirectly address Section 393.1045 and possibly Section 393.1040 RSMo. Cum. Supp. 2009. Like Section 393.1050, Section 393.1045 was part of Senate Bill No. 1181, Laws 2008, and as a consequence is covered by the same argument made by Plaintiffs in Count I and Count II of its March 15, 2010 action in Cole County Circuit Court. Section 393.1045 would be invalid because, after Proposition C had been approved for circulation and sufficient signatures submitted to the Secretary of State, but before it had been voted on at the general election, the General Assembly lacked the power to amend and modify the initiative. Section 393.1045 is in irreconcilable conflict with Section 393.1030.2(1) and since Proposition C was passed later, Section 393.1045 would be repealed by implication.

9. The Staff recommends that all references to Section 393.1045 in the Commission's proposed rule should be deleted. There are references to Section 393.1045 in the following sections of the Commission's proposed rule which should be deleted: 4 CSR 240-20.100(6), 4 CSR 240-20.100(6)(B)2, 4 CSR 240-20.100(6)(C)1, and 4 CSR 240-20.100(11)(C).

10. Section 393.1040 was part of the "Green Power Initiative" legislation, Senate Bill No. 54, Laws 2007 and therefore does not run afoul of Plaintiffs' Count I. Section 393.1040 also does not apply to less than all of the investor-owned electrical corporations regulated by the Commission and therefore does not run afoul of Plaintiffs' Count III, which leaves Count II. It may be argued that Section 393.1040 does not conflict with Proposition C.

11. The subject matter of Section 393.1045 is a cap on retail electric rates[1]:

> Any renewable mandate required by law **shall not raise the retail rates charged to the customers of electric retail suppliers by an average of more than one percent in any year**, and all the costs associated with any such renewable mandate shall be recoverable in the retail rates charged by the electric supplier.

[1] The Staff notes that there is not in Proposition C comparable language to the last sentence of Section 393.1045, which states: "Solar rebates shall be included in the one percent rate cap provided for in this section."

> Solar rebates shall be included in the one percent rate cap provided for in this section.

Emphasis supplied.

12. There is also provision for a cap on retail electric rates in Section 393.1030.2(1):

> . . . The commission, except where the department is specified, shall make whatever rules are necessary to enforce the renewable energy standard. Such rules shall include:
>
> (1) **A maximum average retail rate increase of one percent** determined by estimating and comparing the electric utility's cost of compliance with least-cost renewable generation and the cost of continuing to generate or purchase electricity from entirely nonrenewable sources, taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation;

Emphasis supplied.

13. The Staff has been proposing in the Renewable Energy Standard ("RES") workshops and in the Commission's Agenda sessions a cumulative cap rather than an incremental cap as appropriate for the RES rules. Section 393.1045 reflects an incremental cap while the cap addressed by Section 393.1030.2(1) is in the nature of a cumulative cap. On June 26, 2009, Michael Taylor of the Staff received by e-mail from Khristine A. Heisinger of Stinson Morrison Hecker LLP the comments of American Wind Energy Association, 1020 W. Bryn Mawr, Suite 304, Chicago, IL 60660 regarding ("AWEA") Version 11 of the draft RES rules. Ms. Heisinger's e-mail to Mr. Taylor states, in part, that Wind Capital Group concurs with AWEA's comments. This e-mail was filed in File No. EW-2009-0324[2] by the Staff on June 30, 2009. The comments of AWEA state at pages 2 and 3, in part, as follows:

> . . . AWEA submits that the language in the Senate Bill (codified as § 393.1045) is inapplicable to Proposition C and should be ignored in this rulemaking.[2] . . .
> ---

[2] In the Matter of a Repository File Regarding The Renewable Energy Workshop.

[2] The requirement to write rule language that is contained in the Initiative does not require the Commission to write a rule involving § 393.1045, RSMo. AWEA believes that the language passed in the 2008 Senate Bill attempting to amend the Initiative prior to its approval by the Missouri voters is unconstitutional. While the Commission may not have the authority to determine the constitutionality of a law it is not required here to write a rule on § 393.1045, RSMo. In light of the Constitutional question that surrounds it should decline to do so.

* * * *

. . . For the reasons set forth above, the language sent to the Commission for review should reflect the language of the Initiative only and avoid the legal pitfalls that will arise in the language contained in the 2008 Senate Bill (§ 393.1045, RSMo). . . .

The following companies concur with AWEA on the comments in this document:

* * * *

Wind Capital Group
1430 Washington Ave., Suite 300
St. Louis, MO 63103

On October 21, 2009, the Staff placed in EFIS in File No. EW-2009-0324 a letter dated October 20, 2009 and enclosures from Ms. Heisinger to each of the five (5) Missouri Public Service Commissioners on behalf of the Wind Capital Group citing Section 393.1045 as unproblematic existing law and authority for taking the action recommended by Stinson Morrison Hecker LLP regarding an incremental approach rather than a cumulative approach to the one percent (1%) rate cap question.

1. *The retail rate impact should be forward-looking. As such**, the retail rate impact should be calculated in an incremental manner versus a cumulative manner.***

We are concerned that the current draft language calculates retail rate impact in a cumulative manner, resulting in a retail rate impact that vitiates the progressively higher portfolio standards. This would allow an interpretation of the 1% cap to nullify the renewable portfolio standard practically in its entirety. As demonstrated in the enclosed spreadsheet, electric utilities would be unlikely to even reach the first 2% portfolio standard using such a method. **Our proposal clearly sets forth an incremental calculation** and the results of such a method are demonstrated in the spreadsheet.

2. *Average the retail rate impact as set forth in statute to account for the lumpiness inherent in RPS benchmarks and to make the process more consistent with the IRP process. Average the retail rate impact over a ten year horizon.*

Both of the above methods show the importance of averaging the retail rate over time for impact purposes in order to give any meaning to the RES adopted by the people of Missouri. **Moreover, this averaging is specifically included in § 393.1030.2(1) as well as § 393.1045, and should be included in the rule.** Although Integrated Resource Planning has a 20 year horizon, a ten year horizon seems to be an adequate time period to address the issue of "lumpiness and comply with the statute's requirement of averaging. The enclosed spreadsheet shows both the cumulative method and the incremental method with a ten year averaging applied.

(Boldface emphasis supplied). Charles W. Hatfield of Stinson Morrison Hecker LLP made the following presentation to the Commissioners at the October 21, 2009 Agenda Session respecting the October 20, 2009 materials; in particular, regarding the incremental versus cumulative issue:

Charles W. Hatfield:

Chuck Hatfield with Stinson Morrison Hecker. We represent Wind Capital Group. . . .

We went and hired ICF Group to do some modeling. . . .

But what the modeling pointed out, I think.

I can do it this simply. Here's the line item, Mr. Chairman.

If you look at Line 41.

It says, if you can't read it, payments under the PPA. That's your renewable energy that you're adding. And the big issue that we identify as number one is when you go from in 2011, that's your grey power, when you're going from $56 million that you're spending for your renewable energy to $57 million in 2012 that you're spending for your renewable energy that's an incremental increase of $1 million.

And we're not sure that the way the rule is drafted now makes clear that we're looking at the incremental increase of $1 million. It looks to us like you would take whole in 2012, you take the whole $57 million and so what you're doing is if they had renewables the year before that you already approved under the 1% standard, you're not really giving them credit for those renewables that they had before. And so that's what I'm . . . .

> The issue is incrementally what is your increase each year and we think that is important, a really important issue when you deal with this.
>
> The other thing that we would like for you to think about is the averaging issue. The statute specifically talks about averages and I think, and we've made a suggestion how to do that . . . .
>
> But I think you've got to figure out as a Commission on how you're going to average. . . .
>
> We did point out that, you know, there are some issues on the costs of the CO_2 standard and that sort of thing, and we did try to add some suggestions on it . . . .

Ms. Heisinger noted after Mr. Hatfield's presentation at the Agenda Session on October 21, 2009 that the ICF International, Inc. ("ICF") analysis of a purchase power agreement (PPA) does not address solar and the ICF analysis was intended to show the incremental versus cumulative approach.

14. The Staff notes that the Plaintiffs in the Declaratory Judgment action in Cole County Circuit Court are represented by counsel from Great Rivers Environmental Law Center, 705 Olive St., Suite 614, St. Louis, MO 63101. On June 24, 2009, the Staff filed in File No. EW-2009-0324 an e-mail from one of these counsel, Henry Robertson, which states, in part, regarding Proposition C:

> An issue has been raised whether section 393.1035 is still part of the law and in conflict with the RES.
>
> When an initiative petition is submitted, it is required to include any parts of existing law that it would repeal. Sec.116.050.2(2), RSMo. The Proposition C petition designated sections 393.1020-393.1035 (parts of the old "Green Power Initiative") for repeal. See http://www.sos.mo.gov/elections/2008petitions/2008-032.asp
>
> Thus the measure passed by the electorate included the repeal of 393.1035 (but not 393.1040).
>
> I spoke to the Revisor of Statutes, Patricia Buxton (573-751-4223), about this today, and she agreed that the section is repealed. It will not be corrected in the Revised Statutes till they go to press in November.

WHEREFORE the Staff of the Missouri Public Service Commission submits the instant pleading and Appendix 1 as the comments of the Staff to the Proposed Rule on Electric Utility Renewable Energy Standard Requirements published in the February 16, 2010 issue of the Missouri Register, Vol. 35, No. 4, pages 365-89.

Respectfully submitted,

/s/ Steven Dottheim
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 5th day of April, 2010.

/s/ Steven Dottheim

Staff Comments to Missouri Public Service Commission Proposed Rule 4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements – Case No. EX-2010-0169

(1) -- The sequence of subsections (A), (B), and (C) should be changed to place the subsections in proper alphabetical sequence. The existing subsection (C) should be relocated to subsection (A) and the existing subsections (A) and (B) should be relocated to subsections (B) and (C) respectively.

(1)(D) -- This definition should be changed to recognize alternative ownership situations for customer-generators. The proposed changed wording is: "Customer-generator means the owner, lessee, or operator of an electric generating unit that meets all of the following criteria:"

(1)(D)4. -- The present language replicates the language in the Net Metering Rule. This paragraph should be modified to reference the Net Metering rule. The Net Metering rule should be the governing authority for the technical aspects of interconnection with an electric utility. The proposed alternative wording for the paragraph is: "Meets all applicable safety, performance, interconnection, and reliability standards endorsed by the Net Metering rule, 4 CSR 240-20.065(1)(C)6."

(2) -- This section should be modified to remove any restrictions on the source of RECs utilized for compliance with this rule. 393.1030.1, RSMo states that "The portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state. A utility may comply with the standard in whole or in part by purchasing RECs. Each kilowatt-hour of eligible energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance." The statute does not place any geographic restrictions on the source of the RECs nor does it require the RECs to be specifically associated with energy sold to Missouri customers. The first of these sentences specifically references energy in or outside the state to be utilized for serving Missouri customers. This is an acknowledgement of the overall retail sales by the utility and the sources of that energy, not just renewable energy. The second sentence states specifically that RECS may be utilized for compliance. No mention is made of RECs associated with power sold to Missouri customers. The final sentence explicitly acknowledges that there is a 1.25 multiplier for in-state generation. If the intent of the statute was to limit energy or RECs to the geographic boundaries of Missouri, this last sentence would not be necessary and would in fact serve to reduce the overall portfolio requirements since all energy/RECs would receive the 1.25 credit.

(2)(B)1. -- If subsection (3)(F) is deleted, the reference in this paragraph should be modified to accommodate the deletion by changing the reference from subsection (3)(H) to subsection (3)(G).

(2)(B)2. -- This paragraph should be modified to ensure customer-generator RECS will qualify for Missouri RES compliance, regardless of the net amount of energy provided to

the electric utility. The following additional language should be included following the existing language in this paragraph as follows: "RECs created by the operation of customer-generator facilities shall qualify for RES compliance if the customer-generator is a Missouri electric energy retail customer, regardless of the amount of energy the customer-generator provides to the associated retail electric provider through net metering in accordance with 4 CSR 240-20.065, Net Metering. RECs are created by the operation of the customer-generator facility, even if a significant amount or the total amount of electrical energy is consumed on-site at the location of the customer-generator."

(2)(G) -- This subsection should be deleted entirely. 4 CSR 240-20.015, Affiliate Transactions addresses many of the items that are included in the presently proposed subsection (2)(G). Other items that are included in presently proposed subsection (2)(G) are routinely included in staff reviews of material for various proceedings, including general rate proceedings. Presently proposed subsection (2)(G) was recommended by a party other than Staff. Staff does not believe that this subsection provides any added value to review of material and information associated with general rate proceedings or RESRAM proceedings.

(3)(F) & (G) -- These two subsections should be modified to clarify requirements for the use of a commission designated program for tracking and verifying the trading of renewable energy credits, as specified in Section 393.1030.2., RSMo. This proposed change will enhance the integrity and verification of REC tracking and REC retirement for compliance purposes. Subsection (3)(F) should be deleted. Subsection (3)(G) should be revised to read as follows and renumbered as subsection (3)(F): "All electrical utilities shall use a commission designated common central third-party registry for REC accounting for RES requirements." [Note this change will result in a renumbering of additional subsections of section (3).]

(3)(H) -- This subsection should be modified to be consistent with changes recommended for subsections (3)(F) & (G). The proposed alternative wording for the second sentence of this subsection is: "This additional credit shall not be tracked in the tracking system specified in subsection (F) of this section." [Note this recommended change assumes a renumbering of subsections consistent with deletion of original subsection (3)(F).]

(3)(K) -- The third and fifth sentences of this subsection should be changed to recognize the settlement date lag times inherent with the regional transmission organization/independent system operator associated with the electric utility. The proposed alternative wording for the third sentence is: "Utilities may retire RECs during the months of January, February, or March, following the calendar year for which compliance is being achieved, and designate those retired RECs as counting towards the requirements of that previous calendar year." The proposed alternative wording for the fifth sentence is: "RECs retired in January, February, or March, to be counted towards compliance with the previous calendar year in accordance with this subsection, shall not

exceed ten percent (10%) of the total RECs necessary to be retired for compliance for that calendar year."

(3)(K) -- This subsection should be modified to be consistent with changes recommended for subsections (3)(F) & (G). The proposed changed wording for the fourth sentence of this subsection is: "Any RECs retired in this manner shall be specifically annotated in the registry designated in accordance with subsection (F) of this section and the annual compliance report filed in accordance with section (7) of this rule." [Note this recommended change assumes a renumbering of subsections consistent with deletion of original subsection (3)(F).]

(3)(L) -- This subsection should be clarified to address additional aspects of aggregation. Various entities have indicated that aggregation may be utilized to lessen the administrative burden for small generators. The replacement subsection is: "RECs may be aggregated with other RECs and utilized for compliance purposes. Net metered facilities may aggregate their registration in the commission designated common central third-party registry for REC accounting for RES requirements. This aggregate registration would thereby reduce operational costs for those net metered facilities. The aggregated RECs may be whole or fractional. RECs shall be issued in whole increments. Any fractional RECs, aggregated or non-aggregated, remaining after certificate issuance will be carried forward to the next reporting period for the specific facility(ies). REC aggregation may be performed by electric utilities, customer-generators, or other parties."

(4) -- The last sentence in the introductory paragraph in this section should be changed to recognize alternative ownership situations for customer-generators. The proposed changed wording is: "To qualify for the solar rebate and the Standard Offer Contract of subsection (H) of this section, the customer-owned or leased solar generating equipment shall be interconnected with the electric utility's system and have a rated capacity of greater than or equal to five hundred (500) watts)."

(4)(H) -- This subsection needs to be clarified regarding the use of "generally accepted analytical tools". This subsection should also be clarified concerning the timing of the Standard Offer Contract. The tools are typically computer models that estimate the production of electrical energy from solar systems. The clarification required is the differentiation of the use of the tools for purposes of the Standard Offer Contract (SOC) and S-REC sales other than through a SOC. The replacement subsection is:
"(H) At the time of the rebate payment, the electric utility shall offer a one (1)-time lump sum payment, called a Standard Offer Contract, for the current ten (10)-year fixed price for associated S-RECs. The sale of any S-RECs created by the installed solar electric system shall not be included as a requirement of the electric utility's interconnection agreement. The Standard Offer Contract shall include a requirement for the retail account holder to provide a certification to the electric utility of continued operation of the solar electric system at least five (5) years and not greater than six (6) years after the acceptance of the Standard Offer Contract. Failure to provide this certification shall result in forfeiture by the retail account holder of the prorated portion of the Standard Offer Contract payment.

1. For purposes of the Standard Offer Contract in this subsection, the electrical energy that will be generated by a solar photovoltaic system shall be estimated using generally accepted analytical tools.
2. For sale of S-RECs other than through a Standard Offer Contract, the energy that has been generated by a solar photovoltaic system with a nameplate capacity of ten (10) kW or less shall be estimated using generally accepted analytical tools, unless such smaller systems are equipped with monitoring technology to track actual production.
3. The selection and use of analytical tools in accordance with this subsection shall be conducted in consultation with the staff of the commission."

(4)(H) -- This subsection should be modified to exempt electric utilities from the requirement to offer a Standard Offer Contract if certain conditions are met. This change should be incorporated by inserting the following sentence after the first sentence in the subsection. "Any electric utility which has acquired a sufficient number of S-RECs to comply with the solar requirements of this rule for the current and subsequent calendar year, shall not be required to offer a Standard Offer Contract at the time of rebate payment. If an electric utility utilizes this exemption, it shall be reported in accordance with subsection (7)(A) of this rule.

(4)(I) -- This subsection allows the use of certain S-RECs, purchased under a one-time lump sum payment, even if the facility is no longer operational or decertified during the term of the one-time lump sum payment contract. To ensure that these S-RECs are not utilized for other purposes (sold or traded into other compliance or voluntary markets), additional restrictions should be included in this subsection. The proposed additional wording is: "S-RECs originated under this subsection shall only be utilized by the original purchasing utility for compliance with this rule. S-RECs originated under this subsection shall not be sold or traded."

(5) -- This section of the presently proposed rule utilizes an averaging process to "smooth out" the retail rate impact of generation additions through capital construction or implementation of purchased power agreements. To some extent, there is already a "smoothing" mechanism incorporated into the statutory requirements and other sections of the proposed rule by the provision for RECs. The statute and rule allow RECs to be utilized for compliance for a period of up to three (3) years from the REC origination. By utilization of this concept, RECs can be accumulated for use in future calendar years. This REC acquisition, transfer, and retirement could have a smoothing effect. RECs could be accumulated in anticipation of the mandatory increments of renewable energy resources (e.g., increase from 2% to 5% in 2014, increase from 5% to 10% in 2018). In this manner, there need not be a significant impact on the actual year in which the incremental increase occurs. With the ability to utilize REC accumulation, the need for averaging is diminished or possibly even eliminated.

(5) -- This section of the proposed rule is intended to implement the language in Proposition C that any Commission rulemaking concerning RES standards shall incorporate the following requirement:

> A maximum average retail rate increase of one percent determined by estimating and comparing the electric utility's cost of compliance with least-cost renewable generation and the cost of continuing to generate or purchase electricity from entirely non-renewable sources, taking into account proper future environmental regulatory risk including the risk of greenhouse gas regulation…(Emphasis added).

The Staff interprets the intent of this section of Proposition C as balancing the requirement for reliance upon increasing amounts of renewable generation sources to meet power demands in Missouri with a reasonable limitation on the potential rate impact on electric utility customers of this requirement by mandating a "retail rate impact" (RRI) cap equal to a "maximum average retail rate increase of one percent…".

The language from Proposition C quoted above is clear that the RRI cap calculation is a "hypothetical" calculation; it is to be calculated by comparing the costs of an RES-compliant generation portfolio to the costs of a hypothetical generation portfolio with no renewable resources included whatsoever. The actual RES rate impact on customers, in contrast, will be determined by comparing the costs of an electric utility's actual RES-compliant generation portfolio to its previous generating portfolio reflected in its rate levels, which may include past renewable resource additions added under the RES requirements of Proposition C and those renewable resources that existed prior to the enacting of Proposition C. For this reason, it is possible that the actual rate impacts on customers from addition of renewable generation resources may be materially different than those indicated by the RRI cap calculation and, in fact, may exceed 1% on an annual basis, even if the concurrent RRI cap calculations indicate rate impacts of less than 1%. Section 5 of the presently proposed rule calls for the RRI cap to be calculated on an "incremental" basis, with the cap calculation averaged over a ten-year period. This approach was advocated during the pendency of File No. EW-2009-0324 by the Wind Capital Group. This method was supported by submitting an analysis to the Commission contrasting an "incremental" approach to calculation of the RRI cap with a "cumulative" approach calculation. The Staff will describe both approaches in these comments, illustrated by use of a simple example, to demonstrate the differing assumptions and RRI percentages that result from use of these approaches to determining the RRI cap amount. The incremental approach to calculation of the RRI cap assumes that the intent of the language quoted above from Proposition C was to restrict any annual rate impact to customers as measured under the terms of the RRI calculation from implementation of the RES requirements to 1% or less. The assumption underlying the cumulative approach to calculation of the RRI cap is that the intent of Proposition C was to limit the rate impact on customers of adoption of RES requirements so that customer rates at any time would not be more than 1% higher than the rate levels that would result if there were no renewable resources included in the electric utility's generation portfolio. The incremental approach assumes that the RRI cap limits annual rate increases directly, while the cumulative approach assumes that the RRI cap limits the total differential in rates between two separate generation portfolio scenarios. Regardless of intent, the Staff believes that the cumulative approach is the most consistent and reasonable given the language of Proposition C. The calculation of an RRI cap based upon a comparison of an

actual RES-compliant revenue requirement to a non-renewables revenue requirement, as called for under Proposition C, is a significant departure from traditional ratemaking practices, regardless of whether the incremental or cumulative approach to the RRI calculation in employed.

The following example will set out the Staff's understanding of how RRI impacts would be calculated under both approaches.
Assume the following:

	Year 1	Year 2	Year 3
Non-RES Base Revenue Requirement	1,000	1,050	1,100
Incremental RES Rev. Req.	8	5	3
Cumulative RES Rev. Req.	8	13	16
RRI Percentages – Incremental	0.8%	0.48%	0.27%
RRI Percentages – Cumulative	0.8%	1.24%	1.45%

In this example, under the incremental approach the RRI percentages are calculated by dividing the incremental additional RES revenue requirement for each year by the non-RES base revenue requirement for the same year. Under this approach, all of the annual rate increases associated with RES implementation would be below the 1% RRI cap, and would be presumptively fully recoverable through a RESRAM or general rate proceeding.

Under the cumulative approach illustrated above, the RRI percentages are calculated by dividing the cumulative RES revenue requirement for each year by the non-RES base revenue requirement for the same year. Under this approach, by Year 2 the rates paid by customers under the RES requirements would be more than 1% higher than the rates payable absent RES generation, and the RRI cap at that point would restrain the amount of renewable generation resources the electric utility would be required to build or acquire.

The Staff believes the language in Proposition C concerning the RRI cap calculation is not detailed or specific enough to provide absolute guidance as to the exact method by which the RRI should be calculated. However, it is the Staff's opinion that the most reasonable interpretation of the Proposition C language concerning the RRI cap supports use of the cumulative approach discussed above. The incremental approach to calculating RRI is premised upon application of an annual rate increase cap applied to each and every 12-month period, but Proposition C does not require or even imply the concept of an annual measurement of RRI in any way. This contrasts with the earlier statutory language in Section 393.1045, RSMo that "any renewable mandate required by

law shall not raise the retail rates charged to the customers of electric retail suppliers by an average of more that one percent in any year…". Among other things, the absence of any similar language in Proposition C leads the Staff to the conclusion that the incremental approach to RRI cap calculation was not the intent of the Proposition C.

The other major question regarding calculation of the RRI cap is whether the cap is to be applied strictly on an annual basis, or calculated using an average over a period of several years. In this context, applying the RRI cap (using a cumulative measurement approach) on an annual basis means that the rate differential between the RES compliant generation portfolio scenario and the non-renewables generation portfolio could not exceed 1% in any year. Applying the RRI cap over a multi-year period means that the rate differential between the two scenarios could not exceed 1% on an average basis over the entire multi-year period. The Staff notes the literal language of Section 393.1030.2(1): "Such rules shall include: (1) A maximum average retail rate increase of one percent determined by estimating and comparing . . ."

A strict one-year cap, under the cumulative approach, would prohibit any increase in rates that causes the electric utility to charge a rate for an RES compliant generation portfolio that would exceed by greater than 1% the rates that would be charged for a the hypothetical non-RES generation portfolio for any year. A multi-year average approach, in contrast, under the cumulative approach would allow RES rate increases causing greater than a 1% difference between the RES compliant and non-renewables scenario in one or more years, as long as those increases were offset by other annual increase percentages of less than one percent during the averaging period that resulted in a difference of one percent or less for the entire multi-year period being examined. The Staff believes that strict application of the RRI cap on an annual basis might unduly restrain the level of RES investment contemplated under Proposition C. Accordingly, we believe that a reasonable averaging period is acceptable for purposes of calculating the RRI cap calculated on a cumulative basis. However, as previously noted, the presently proposed rules call for a ten-year averaging period for purposes of calculating the RRI cap. The Staff is concerned that there is no language in Proposition C indicating that a ten-year averaging period was intended and a ten-year averaging period may be too long, and allow unreasonably high annual rate increases for RES requirements. For example, using a ten-year averaging period, it would be acceptable for an electric utility to be granted a rate increase consistent with a 10% RRI increase in the first year of an RES compliance period as long as no further increases were to be granted over the ten-year averaging period currently reflected in the proposed rules.

For this reason, the Staff believes that use of RRI cap calculation averaging periods matching the number of years specified in Proposition C, Section 393.1030.1(1), (2), (3), and (4), for each escalating RES percentage increment, as follows, would be more appropriate averaging periods than the ten-year period currently prescribed in the proposed rules:

Averaging Period	Number of Years	RES %

2011-2013	3	2%
2014-2017	4	5%
2018-2020	3	10%

The final required RES percentage increment, to 15% of total generation/purchases, begins in 2021 and does not increase further beyond that point. The Staff believes it is reasonable to use a four-year averaging period for purposes of calculating the RRI cap, covering the years beyond 2021. The Commission does not need to further address the years beyond 2021 now. The General Assembly or Missouri voters may do so in the future for the Commission.

(5) -- For purposes of completeness and clarity, the word "retail" should be inserted as the second word in the second sentence in subsection (5)(A).

(6) -- Once a certain level of RES compliance costs are reflected in customer rates through RESRAM applications or general rate proceedings, it is possible that some components of those costs may decrease over time, such as reductions in the price of power obtained through purchased power contracts. Also, any reductions in an electric utility's fuel and purchased power costs due to increasing reliance on renewable resources should also be flowed into rates on a timely basis through RESRAM applications or general rate proceedings, if such expense reductions are not already passed on to customers through fuel adjustment clause mechanisms.

For this reason, the preamble for section (6) should be modified to include requirements to ensure the electric utilities that receive rate adjustments through the RESRAM process are based on the true net cost or benefit of RES compliance, not based only upon increases or decreases to the electric utility's revenue requirements measured in isolation. At the end of the existing preamble, the following sentence should be added. "In all RESRAM applications, the increase in electric utility revenue requirements shall be calculated as the amount of additional RES compliance costs incurred since the electric utility's last RESRAM application or general rate proceeding, net of any reduction in RES compliance costs included in the electric utility's prior RESRAM application or general rate case, and any new RES compliance benefits."

(6) -- This section of the proposed rule sets out the procedures by which electric utilities can seek to reflect the net costs of compliance with the RES requirements in their retail rates.

One difference between Proposition C and the statutes that in recent years allowed for single-issue rate filings for fuel/purchased power expenses and environmental costs is that electric utilities were required to file a general rate proceeding prior to initiating single-issue cost recovery of fuel/purchased power expenses and environmental costs, while no such general rate case filing requirement is required under the proposed RES rules for single-issue recovery of RES costs through the RESRAM mechanism.

One reason a general rate case filing was mandated prior to single-issue fuel/purchased power rate recovery was to allow for calculation of a "base" value for fuel/purchased power and/or environmental costs in the general rate case. Then, when utilities sought recovery on a single-issue basis for fuel/purchased power or environmental costs, a pre-existing "base" cost was established to which the electric utility's incremental costs incurred since the general rate proceeding could be compared for purposes of cost recovery. However, no such "base" value of renewable costs will necessarily be known prior to the electric utility's seeking recovery of RES compliance costs through RESRAM applications under the terms of the proposed rule. Since Missouri's electric utilities have all incurred at least some levels of costs related to renewable generation resources prior to the effective date of Proposition C, this creates the possibility that the utilities could obtain double-recovery of some portion of their renewable costs in rates, once through their existing rate levels and again through a RESRAM application. There are several ways to deal with the lack of a pre-established base level of RES costs for purposes of computing appropriate RESRAM rates. One way would be to require an upfront general rate case prior to allowing utilities to seek single-issue RESRAM rate recovery of RES compliance costs. However, Proposition C does not require such a rate case filing. The other alternative approach would be to require establishment of a base level of RES costs in the initial RESRAM application by an electric utility. This is the approach recommended by the Staff.

Developing the amount of renewable costs already reflected in an electric utility's rates in its initial RESRAM application will take additional effort and time compared to subsequent RESRAM filings, in which the existing base level of RES costs will be known and established. Section 6 of the presently proposed rule provides for an electric utility's initial RESRAM filing to be processed according to Section 6(C) of the presently proposed rules, which calls for the Staff to submit its recommendation on the RESRAM application within 75 days of the application date. The Staff believes this may not be sufficient time to process an electric utility's initial RESRAM application given the lack of a base level of renewable costs, and recommends that the Staff and other interested parties be allowed a minimum of 120 days to submit its recommendation on the initial RESRAM rate change request for that reason. The Staff recommends that the following revision and additional language be added to the third sentence of Section 6(A) in the proposed rules: "For the initial filing for the electric utility in accordance with this section, subsection (C) of this section shall be utilized, except that the staff, and individuals or entities granted intervention by the commission, may file a report or comments no later than one hundred twenty (120) days after the electric utility files its application and rate schedules to establish a RESRAM."

(6)(B) -- In this section of the proposed rules, the procedures for processing RESRAM applications with less than a 2% actual retail rate impact are described. Given the expedited nature of this type of application (the Staff has 60 days to file a recommendation after the electric utility filing), the Staff recommends that the rules for this type of application include the following requirement: "A complete explanation of all of the costs, both capital and expense, incurred for RES compliance that the electric utility is proposing be included in rates and the specific account used for each cost item

on the electric utility's books and records." This requirement is identical to that found in Section 6(C)2E, pertaining to RESRAM applications with a greater than 2% actual rate impact. The Staff recommends that this additional language be incorporated into the proposed rule as a new subsection 6(B)5.A, with the existing subsections 6(B)5.A through H renumbered accordingly.

(6)(B) -- Any capital investments made to comply with the RES requirements will have a decreasing revenue requirement impact over time, due to the ongoing accruals of depreciation expense made to the electric utility's depreciation reserve, which decreases the electric utility's rate base. An accurate measurement of an electric utility's RES revenue requirement at a point in time therefore requires that this decrease in rate base be incorporated into any new RESRAM rates sought pursuant to RES rules. For this reason, the Staff believes that the filing requirements for RESRAM applications made pursuant to Section 6(B) need to include the provision of the following information by the electric utility:

> The rate base used in calculating the proposed RESRAM, including an updated depreciation reserve total incorporating the impact of all RES plant investments previously reflected in general rate proceedings or RESRAM application proceedings initiated following enactment of the RES rules.

The Staff recommends this new requirement be reflected in 4 CSR 240-20.100 as Section 6(B)5.F. The sections of this rule currently numbered as 6(B) 5. F, G and H would accordingly need to be re-numbered, also taking into account the Staff's other recommended revision to Section 6(B), discussed above.

(6)(C) -- For the same reason as discussed above, the Staff believes that the filing requirements for RESRAM applications made pursuant to Section 6(C) need to include the provision of the following information by the electric utility:

> The rate base used in calculating the proposed RESRAM, including an updated depreciation reserve total incorporating the impact of all RES plant investments previously reflected in general rate proceedings or RESRAM application proceedings initiated following enactment of the RES rules.

The Staff recommends this new requirement be reflected in 4 CSR 240-20.100 as Section 6(C)3.A(VII). The section of this rule currently numbered as 6(C)3.A(VII) accordingly needs to be re-numbered.

(7) -- The initial paragraph of this section should be clarified for purposes of filing the electric utility's initial compliance report. A new sentence should be inserted following the first sentence (which addresses the filing of the annual RES compliance report). This new sentence is: "The initial annual RES compliance report shall be filed by April 15, 2012 for the purpose of providing the necessary information for the first RES compliance year (2011)."

(7)(A) 1. -- This section should be modified to incorporate requirements consistent with the comment on section (4)(H) above regarding an exemption from the mandatory offer of a Standard Offer Contract. New section (7)(A)1.L. should be inserted as follows and all subsequent subparagraphs renumbered accordingly:

> The total number of customers that were not offered a Standard Offer Contract, in accordance with subsection (4)(H), and the reason for not offering the Standard Offer Contract. The reason for not offering the Standard Offer Contract shall specifically include the number and source of S-RECs available for compliance in the current calendar year and the immediate past calendar year;

(7)(A)1.I.(V) -- The reference in this subparagraph is incorrect. The correct reference is incorporated in the following wording for the subparagraph: "All meter readings used for calculation of the payments referenced in part (IV) of this subparagraph."

(8)(B)2. -- This paragraph refers to the department's (Department of Natural Resources) energy center. Effective February 1, 2010, the energy center became the division of energy. The proposed changed wording for the second sentence of this paragraph is: "These projects shall be selected by the department's division of energy in consultation with the staff."

(9) -- The Staff concurs with the comments of the General Counsel to the Commission filed on March 31, 2010.

(11) -- The Staff also notes that a revision of 4 CSR 240-20.100(11)(C) is required. The Staff proposes the following substitute language: "The commission may not waive or grant a variance from any section of this rule that implements the specific requirements of Proposition C, adopted by Initiative, November 4, 2008."

MICHAEL E. TAYLOR

- Bachelor of Science degree in Mechanical Engineering, University of Missouri-Rolla, 1972

- Master of Science degree in Engineering Management, University of Missouri-Rolla, 1987

- United States Navy (Submarine Service), 1972 to 1979

- Union Electric Company (AmerenUE), 1979 to 2003
  Experience included Callaway Plant operations, work control, engineering, quality assurance, quality control, instrumentation and controls, fire protection, industrial safety, outage scheduling, daily scheduling and work planning
  Licensed as a Senior Reactor Operator

- Missouri Public Service Commission Staff, 2003 to present
  Utility Engineering Specialist II, Safety/Engineering, Energy Department
  Utility Engineering Specialist III, Engineering Analysis, Energy Department

PREVIOUS TESTIMONY OF MICHAEL E. TAYLOR

Case Number	Company	Type of Filing	Issue
ER-2006-0314	Kansas City Power & Light	Direct	Plant in Service
ER-2006-0314	Kansas City Power & Light	True-Up Direct	Plant in Service
ER-2007-0002	AmerenUE	Direct	Plant in Service
ER-2007-0002	AmerenUE	Supplemental Direct	Plant in Service
ER-2007-0004	Aquila	Rebuttal	Fuel Adjustment Clause
ER-2007-0291	Kansas City Power & Light	Staff Report	Plant in Service
ER-2007-0291	Kansas City Power & Light	True-Up Direct	Plant in Service
ER-2008-0093	Empire District Electric	Staff Report	Plant in Service
ER-2008-0093	Empire District Electric	Rebuttal	Fuel Adjustment Clause
ER-2008-0093	Empire District Electric	Surrebuttal	Plant in Service
ER-2008-0318	AmerenUE	Rebuttal	Fuel Adjustment Clause
ER-2009-0089	Kansas City Power & Light	Surrebuttal	Plant in Service
ER-2009-0089	Kansas City Power & Light	Live Testimony	Plant in Service
ER-2009-0090	KCP&L Greater Missouri Operations Company	Live Testimony	Plant in Service
ER-2010-0036	AmerenUE	Staff Report	Fuel Adjustment Clause

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

AFFIDAVIT OF MICHAEL E. TAYLOR

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Michael E. Taylor, of lawful age, on oath states that he participated in the preparation of the foregoing Staff Comments; that he has knowledge of the matters set forth in such Staff Comments; and that such Staff Comments are true to the best of his knowledge and belief.

Michael E. Taylor

Subscribed and sworn to before me this 5th day of April, 2010.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

Notary Public

Mark L. Oligschlaeger

Education, Background and Case Participation

I attended Rockhurst College in Kansas City, Missouri, and received a Bachelor of Science degree in Business Administration, with a major in Accounting, in 1981. I have been employed by the Missouri Public Service Commission (Commission) since September 1981 within the Auditing Department.

In November 1981, I passed the Uniform Certified Public Accountant examination and, since February 1989, have been licensed in the state of Missouri as a CPA. The Uniform CPA examination consisted of four parts: Accounting Practice, Accounting Theory, Auditing and Business Law. I received a passing score in all four of these components the first time that I took the test.

I have been employed by this Commission as a Regulatory Auditor for over 28 years, and have submitted testimony on ratemaking matters numerous times before the Commission. I have also been responsible for the supervision of other Commission employees in rate cases and other regulatory proceedings many times. I have received continuous training at in-house and outside seminars on technical ratemaking matters since I began my employment at the Commission.

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
Western Resources	GR-90-40 and GR-91-149	Take-Or-Pay Costs
Missouri-American Water Company	WR-91-211	True-up; Known and Measurable
Missouri Public Service	EO-91-358 and EO-91-360	AAO
Generic Telephone	TO-92-306	Revenue Neutrality; Accounting Classification
Generic Electric	EO-93-218	Preapproval
Western Resources & Southern Union Company	GM-94-40	Regulatory Asset Transfer
St. Louis County Water	WR-95-145	Policy
Union Electric Company	EM-96-149	Merger Savings; Transmission Policy
St. Louis County Water	WR-96-263	Future Plant
Missouri Gas Energy	GR-96-285	Riders; Savings Sharing
The Empire District Electric Company	ER-97-82	Policy
Missouri Public Service	ER-97-394	Stranded/Transition Costs; Regulatory Asset Amortization; Performance Based Regulation
Western Resources & Kansas City Power & Light	EM-97-515	Regulatory Plan; Ratemaking Recommendations; Stranded Costs
United Water Missouri	WA-98-187	FAS 106 Deferrals
Laclede Gas Company	GR-99-315 (remand)	Depreciation and Cost of Removal
Missouri-American Water	WM-2000-222	Conditions
UtiliCorp United & St. Joseph Light & Power	EM-2000-292	Staff Overall Recommendations
UtiliCorp United & The Empire District Electric Company	EM-2000-369	Overall Recommendations
Green Hills Telephone	TT-2001-115	Policy
IAMO Telephone Company	TT-2001-116	Policy

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
Ozark Telephone Company	TT-2001-117	Policy
Peace Valley Telephone	TT-2001-118	Policy
Holway Telephone Company	TT-2001-119	Policy
KLM Telephone Company	TT-2001-120	Policy
Missouri Gas Energy	GR-2001-292	SLRP Deferrals; Y2K Deferrals; Deferred Taxes; SLRP and Y2K CSE/GSIP
The Empire District Electric Company	ER-2001-299	Prudence/State Line Construction/Capital Costs
Ozark Telephone Company	TC-2001-402	Interim Rate Refund
Gateway Pipeline Company	GM-2001-585	Financial Statements
Missouri Public Service	ER-2001-672	Purchased Power Agreement; Merger Savings/Acquisition Adjustment
Union Electric Company	EC-2002-1	Merger Savings; Criticisms of Staff's Case; Injuries and Damages; Uncollectibles
Laclede Gas Company	GA-2002-429	AAO Request
Aquila, Inc., d/b/a Aquila Networks-MPS-Electric and Aquila Networks-L&P-Electric and Steam	ER-2004-0034 and HR-2004-0024 (Consolidated)	Aries Purchased Power Agreement; Merger Savings
Missouri Gas Energy	GR-2004-0209	Revenue Requirement Differences; Corporate Cost Allocation Study; Policy; Load Attrition; Capital Structure
Empire District Electric	ER-2006-0315	Fuel/Purchased Power; Regulatory Plan Amortizations; Return on Equity; True-Up
Missouri Gas Energy	GR-2006-0422	Unrecovered Cost of Service Adjustment; Policy
Laclede Gas Company	GR-2007-0208	Case Overview; Depreciation Expense/Depreciation Reserve; Affiliated Transactions; Regulatory Compact

CASE PARTICIPATION OF
MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
Missouri Gas Utility	GR-2008-0060	Report on Cost of Service; Overview of Staff's Filing
The Empire District Electric Company	ER-2008-0093	Case Overview; Regulatory Plan Amortizations; Asbury SCR; Commission Rules Tracker; Fuel Adjustment Clause; ROE and Risk; Depreciation; True-up; Gas Contract Unwinding
Missouri Gas Energy, a Division of Southern Union	GR-2009-0355	**Staff Report Cost of Service**; **Direct** Report on Cost of Service; Overview of the Staff's Filing**; Rebuttal** Kansas Property Taxes/AAO; Bad Debts/Tracker; FAS 106/OPEBs; Policy; **Surrebuttal** Environmental Expense, FAS 106/OPEBs
The Empire District Electric Company, The-Investor (Electric)	ER-2010-0130	Report on Cost of Service; Overview of the Staff's Filing; Regulatory Plan Amortizations

Cases prior to 1990 include:

Kansas City Power and Light Company	ER-82-66
Kansas City Power and Light Company	HR-82-67
Southwestern Bell Telephone Company	TR-82-199
Missouri Public Service Company	ER-83-40
Kansas City Power and Light Company	ER-83-49
Southwestern Bell Telephone Company	TR-83-253
Kansas City Power and Light Company	EO-84-4
Kansas City Power and Light Company	ER-85-128 & EO-85-185
KPL Gas Service Company	GR-86-76
Kansas City Power and Light Company	HO-86-139
Southwestern Bell Telephone Company	TC-89-14

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

AFFIDAVIT OF MARK L. OLIGSCHLAEGER

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Mark L. Oligschlaeger, of lawful age, on oath states that he participated in the preparation of the foregoing Staff Comments; that he has knowledge of the matters set forth in such Staff Comments; and that such Staff Comments are true to the best of his knowledge and belief.

Mark L. Oligschlaeger

Subscribed and sworn to before me this 5th day of April, 2010.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

Notary Public