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April 5, 2010

VIA HAND DELIVERY AND FILED IN EFIS

Steven C. Reed
Secretary of the Commission
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65102

Re: Case No. EX-2010-0169
In the Matter of a Proposed Rulemaking Regarding Electric Utility Renewable Energy Standard Requirements
Comments on Proposed Rule 4 CSR 240-20.100

Dear Mr. Reed:

I am writing to submit comments regarding the above-referenced Proposed Rulemaking to implement Proposition C, Missouri's Renewable Energy Standard ("RES"). The comments in this submission constitute the combined effort and consensus positions of eight renewable energy companies as follows:

- BP Wind Energy NA, Inc.;
- enXco, Inc.;
- Gamesa Energy USA;
- Iberdrola Renewables, Inc.;
- Invenergy LLC;
- NextEra Energy Resources LLC;
- TradeWind Energy LLC; and
- Wind Capital Group LLC.

This group of eight companies (which may be informally referred to herein or in appendices as the "Alliance" or "Wind Alliance") also received input from Wind on the Wires, a collaborative organization that works with utilities and the Midwest Independent System Operator ("MISO") to provide wind energy with fair access to the electric transmission system that delivers power to market, and The Wind Coalition, which performs similar services for the Electric Reliability Council of Texas ("ERCOT") and the Southwest Power Pool ("SPP"). In addition to utilizing Stinson Morrison Hecker LLP to assist in this process, the group engaged the services of ICF International ("ICF"), a respected consulting firm that specializes in energy and environmental work worldwide, and which has dedicated practices in such areas as renewable energy, climate change, energy efficiency, fuels, electric transmission, and reliability.[1]

I. Overview of Comments.

The comments address the following portions of the rule:

- This submission is in support of the current geographic sourcing language found in 4 CSR 240-20.100(2)(A) & (B) of the Proposed Rulemaking.

- This submission is in support of the current Retail Rate Impact language found in 4 CSR 240-20.100(5) of the Proposed Rulemaking, but wants to note that clarification may be needed as to precisely how a 10 year average is calculated, and to raise the issue of whether a 20 year average would be more appropriate.

- This submission proposes the elimination of the current language requiring a line item on customer bills found in 4 CSR 240-20.100(6)(A)6.C. and (6)(A)7.C.

- This submission wants to raise attention that the method for determining which track of the dual track RESRAM proceeding a utility must utilize (4 CSR 240-20.100(6)(B) or (C) is based on a revenue increase amount that includes amounts that would be attributable to non-renewable energy if not for the RES to ensure this is the Commission's intent.

- This submission recommends, that in the actual carrying out of the RES Compliance Plan filing and review process in 4 CSR 240-20.100(7)(B)-(F), that as much transparency be maintained as possible (e.g., avoid overuse of

[1] ICF was founded in 1969, has dozens of offices nationwide, and has participated in scores of regulatory proceedings such as this one. Their clients run the gamut from electric utilities to independent power producers, state commissions, Federal agencies, financial institutions and industrial firms. They are considered to be thoroughly independent and unbiased; more on ICF and its relevant experience is available at www.icfi.com.

designation of information as confidential or highly confidential) to ensure a meaningful review, especially if an investor owned utility is claiming that it cannot meet the RES percentage without hitting the Retail Rate Impact.

In addition to these rule-specific comments, we are providing information in two areas:

- The economic benefits of wind farms being developed in Missouri; and
- Energy subsidies, due to the issue being raised in Commissioner Davis' dissenting opinion on the proposed rulemaking.

II. The Enactment of Proposition C and the Role of this Commission.

Proposition C, Missouri's Renewable Energy Standard, was adopted by initiative petition by the voters of this state on November 4, 2008 by a margin of 66% to 34%.[2] Pursuant to Section 393.1030.2, RSMo Supp. 2008[3], the people charged this Commission to make "rules necessary to enforce the renewable energy standard." The Renewable Energy Standard has been adopted by the people. They have expressed their desire for the development of renewable energy now, and not just through voluntary adoption under the previous system. They have placed upon the investor-owned utilities ("IOU") a mandate with a rate impact relief valve.

"The Commission's primary function is the regulation of public utilities, and the Commission identifies its principal purpose as serving and protecting ratepayers."[4] But as a creature of statute, the Commission's "powers are limited to those conferred by statute, either expressly, or by clear implication, as necessary to carry out the powers specifically granted."[5] "Accordingly, whether the Commission's actions are lawful 'depends directly on whether it has statutory power and authority to act.'"[6]

The people have decided that it is in their best interests to have renewable energy development begin now, for every IOU, and have shown that they are aware that increased environmental regulatory costs are on the horizon. Missourians have agreed to pay more now for renewable energy over non-renewable energy. Some Missourians who voted for Proposition C may have just supported renewable energy; others may have supported a more diversified portfolio of energy sources. But what one can tell from the language, which is where we glean the intent of the voters, is

[2] Official Election Returns, State of Missouri 2008 General Election.
[3] All statutory references herein are to RSMo Supp. 2008 unless otherwise indicated.
[4] *State ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n,* 850 S.W.2d 903, 911 (Mo.App. W.D.1993).
[5] *Utilicorp United Inc. v. Platte-Clay Elec. Co-op., Inc.,* 799 S.W.2d 108, 109 (Mo.App. W.D. 1990).
[6] *State ex rel. Gulf Transp. Co. v. Pub. Serv. Comm'n of State,* 658 S.W.2d 448, 452 (Mo.App. W.D. 1983).

that they are willing to pay more for renewable energy — they built this into the RES. Clearly some IOUs are adding renewable energy to their portfolio and it can be done under the pre-RES system. But Missourians wanted assurances; Missourians implemented a mandate.

From a consumer protection viewpoint, Proposition C is an investment now to avoid higher costs later — an expectation that paying more now will pay off for consumers in the long run. Imagine an IOU that continues to avoid renewable energy investments and continues to put new investments into non-renewable energy — the energy types that are predicted to eventually have more stringent and new environmental regulatory risks. This may result in lower costs right now for its customers. But when those environmental costs hit, and that IOU has done nothing to stave off the effects of those regulations by adding renewable energy to its portfolio, the customers that perhaps saved money today are going to pay far more tomorrow. Because that IOU was focused on what is cheapest today, not on what will be cheaper in the years to come. Missouri's Renewable Energy Standard forces IOUs to plan for those future costs and add balance to their portfolio, stemming the risk of passing along far greater costs in the future to customers in exchange for cheaper prices now.

The Missouri RES is about consumer protection. It is the people's own decision about how they want to be protected. And it sets forth what mechanism they want and how much more they are willing to pay now to stave off future costs.

In carrying out its rulemaking authority, this Commission cannot act in a manner that thwarts the will of the people as set forth in the language of Proposition C. Proposition C has set a somewhat different standard for consumer protection (cheapest is not always best in the short run) and this Commission is not free to ignore it and supplant it with its own views of what is best for the people.

III. Geographic Sourcing.

As noted in the overview to these Comments, we are in support of the current geographic sourcing language found in 4 CSR 240-20.100(2)(A) & (B) of the Proposed Rulemaking.

A. The current geographic sourcing language is what is mandated by statute which requires the energy to be sold to Missouri consumers to be counted towards meeting the portfolio requirements.

Section 393.1030.1 of the Renewable Energy Standard specifically addresses geographic sourcing:

> 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.

This language is clear and requires that the renewable energy be sold to Missouri consumers in order for a REC associated with that energy to count towards meeting the standard.[7] This is consistent with the fact that the statute allows renewable energy credits ("RECs") to be used to comply with the standard (therefore allowing unbundling) and the fact that the statutory scheme also contemplates energy generated outside the state to be counted — otherwise the 1.25 multiplier for in-state generation would be rendered meaningless.[8]

The statute separately addresses what the "base" is for determining the portfolio percentage — § 393.1030.1 states, "Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales:" and goes on to the 2%, 5%, 10% and 15% milestones. To interpret the "sold to Missouri consumers" language found after subdivisions (1) through (4) in subsection 1 to be about calculating the portfolio portions would render some of the language as meaningless and redundant, which is contrary to the rules of statutory construction.[9]

As such, the language that is currently in the proposed regulation in subsection (2)(A) carries out this mandate of the statute that the portfolio standards be met from electricity sold to Missouri consumers, in the form of the associated RECs (bundled or unbundled).

To ignore the clear language in subsection 1 of section 393.1030 would be to step outside of the Commission's statutory authority.[10] Rules are void if they attempt to modify the statutes under which they are promulgated.[11] To count towards meeting the portfolio percentages, the people of this state, by the plain language of the statute, prefer in-state generation, but allow out-state generation so long as the renewable energy is sold to Missouri consumers. This is the standard found in the proposed rulemaking and the standard that should remain in the final order of rulemaking. To do otherwise would be contrary to the mandate of the people. The Commission has no authority but to adopt this geographic sourcing standard.

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[7] The primary rule of statutory construction, whether the statute is enacted by the general assembly or by the people, is to ascertain the intent of the respective lawmakers based upon the plain language of the statute as enacted. *Missourians for Honest Elections v. Missouri Elections Comm'n*, 536 S.W.2d 766, 775 (Mo. App. 1976).
[8] *Missourians for Honest Elections*, 536 S.W.2d at 773
[9] *Id.*
[10] *Supra*, notes 5-6; *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n,* 585 S.W.2d 41, 47 (Mo. banc 1979).
[11] *Missouri Hosp. Ass'n v. Missouri Dep't. of Consumer Affairs, Regulation & Licensing,* 731 S.W.2d 262, 264 (Mo. App. 1987)

B. Compliance with a generated in Missouri or sold to Missouri customers requirement is not problematic or burdensome.

At an earlier point in the informal rulemaking, the term "delivered" was in subsection (2)(A) of the draft rule. To clarify that it was not proof of electron tracking or firm transmission that was being suggested, a change was made from "delivered" to "sold". "Sold," which is the language used in the statute adopted by the people, should eliminate any confusion or concerns that the term "delivered" brought about.

Proof of sale would never, in our opinion, require investor owned utilities to "track electrons." The New York Public Service Commission, in response to outcries there as regards a delivery requirement put it best when it stated:

> [Stakeholder's] argument that a delivery requirement is "impractical" given the inability to track electrons is of no consequence. No tracking system claims to track electrons. The entire financial system supporting electricity generation, transmission, distribution and delivery is based on the path of contracts, not the physical properties of electrons. What is important is that monies paid by retail customers to obtain electricity from renewable resources are used for that purpose in a system that provides verification.[12]

According to reports during the informal rulemaking deliberations, physical delivery could be shown in the Southwest Power Pool ("SPP") transmission area. Even so, firm transmission is not what is required; sales are required. As for the Midwest Independent Transmission System operator ("MISO"), we believe that the sale can be demonstrated by the financial documents — by a path of contracts. Other MISO states have a generated in or "delivered to" requirement. Montana is in the MISO footprint and it requires generation or delivery to Montana.[13] Ohio, a state partially within the MISO footprint, requires 50% in state and 50% deliverable.[14] Finally, Wisconsin, a state fully within the MISO footprint, requires in-state generation or delivery as well.[15] If Wisconsin, Montana and Ohio can determine delivery into their respective states within the MISO footprint, surely Missouri can determine sale to Missouri consumers in a similar manner.

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[12] NY PSC Order Regarding Retail Renewable Portfolio Standard in Case 03-E-0188, issued and effective September 24, 2004 (emphasis added).
[13] "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana . . ." Mont. Code Ann. § 69-3-2003(10), (2009).
[14] Case No. 08-888-EL-ORD Rules for Energy Efficiency, Alternative & Renewable Energy, Emission Controls and Amendments to Forecasting Chapters 4901:5-1, 4901:5-3, and 4901:5-5 of the Ohio Administrative Code, 4901:1-40-01(I) and 4901:1-40-03(A)(2)(b). Ohio requires 50% in state generation and 50% demonstrably deliverable into Ohio.
[15] Wis. Admin. Code PSC 118.01-118.08 (2007).

Further, we believe that the IOUs should be afforded flexibility as between methods of proving sale of electricity to Missouri consumers, so that whichever is reliable but more efficient to obtain and provide to the Commission, can be used. The key is proving sale to Missouri consumers by a path of contracts from source to sink and ensuring no double-counting as among RES states.

C. Many states have the same geographic sourcing requirement for their renewable energy standard that is currently in Missouri's proposed rulemaking — in-state generation or sale into the state.

Aside from following the plain language of the Renewable Energy Standard, this Commission can find support for such a policy in numerous other states' renewable energy standards. Several states require generation in the state or that the energy is delivered into the state. A table showing other States' requirements and information on RES adopted since the table was created is found in *Appendix A* to this document.

This regionalism and apparent preference for in-state generation evidences not only a desire of the citizens to actually be using renewable energy, but that they also desire the economic development that comes with renewable energy facilities and related industries. And the rate cap, in conjunction with the 1.25 multiplier for in-state generation, are also an indication that Missouri's citizens are willing to pay more to have the in-state economic development that result from Missouri-located facilities.

D. Requiring generation in the state or sales to Missouri customers does not violate the dormant commerce clause.

During the informal rulemaking process, it was asked whether the geographic sourcing that is now in the proposed rulemaking would violate the dormant commerce clause. In response, information was filed. Although we have not heard the dormant commerce clause question raised since that time, we want to include this to ensure it is part of the public record in the formal rulemaking process. The information addressing such a concern, if one still exists, is in *Appendix B* to this document.

We trust the Commission will agree that the dormant commerce clause is not an issue with regard to the current geographic sourcing language in the Proposed Rulemaking and will vote for a final order of rulemaking with no changes to the geographic sourcing requirement.

IV. The Retail Rate Impact.

This submission is <u>in support of</u> the current Retail Rate Impact language found in 4 CSR 240-20.100(5) of the Proposed Rulemaking, but we want to note that clarification may be needed as to precisely how a 10 year average is calculated, and we want to raise the question as to whether, in fact, a 20 year average would be more appropriate.

It is on this very important issue of the retail rate impact that ICF has been of critical assistance to us in understanding the issues and in developing a model that could actually be used by IOUs if the Commission deems it useful as such. ICF's detailed written comments are included with this submission in *Appendix C*. Appendix C also includes screen shots from the ICF-developed model, which uses a Missouri IOU as an example. The screen shots show the variables in three Scenario Analyses: (1) Low Impact; (2) Reference Case; and (3) High Impact. The variable parameters for each scenario are also shown. Then, at the bottom, a comparison is made between two models set forth by ICF: a ten year averaged cumulative method and a ten year averaged incremental method. Another way of comparing these two methods is on the two screen shot bar graphs provided, which provides the information for each method on one bar chart. A copy of the explanation and sources of the variable parameters is also provided. We are providing these screen shots for the EFIS and regular filing, but an electronic version (Excel) of the modeling is also being hand-delivered on a CD to you, the Commissioners and the service parties and is considered part of our formal comments.

We agree with ICF that whatever is to be expected of the IOUs as far as modeling the rate impact, it should be relatively simple and transparent so that laypersons can be educated and understand the inputs and methods. A model should not be so complicated that PSC Staff, the Office of Public Counsel and interested stakeholders cannot interpret it and ascertain whether the IOU's inputs and outputs are reasonable and sound.

ICF also recommends that the calculations be performed when actual data is in hand. We believe that has been accomplished in the current rulemaking, via the requirement that it be performed in the context of the Compliance Plan (section (7)(B)1.F.) and for an actual cost recovery proceeding (RESRAM – section (6)). As far as ICF's other recommendations, I will be attempting (as a lawyer, not an economist or mathematician) to distill them down in these main written comments, but please note that the comments and screen shots in Appendix C are part of the formal comments, as is the electronic version of the modeling that is being hand-delivered.

A. Legal Requirements and Rules of Construction.

The statute specifically requires the Commission's rules to 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;

We do note that Section 393.1045 is also referenced in the proposed rulemaking in the section on cost recovery. To the extent that 393.1045 and 393.1030.2(1) can be reconciled and both applied, the principal of repeal by implication would not be applicable.[16] To the extent there is some conflict, the latter-enacted would be considered to repeal the former, even without a repealing clause.[17]

The rules for statutory construction of a statute adopted by initiative petition are essentially the same as for those adopted by the General Assembly.[18] For example, one "cannot attribute an intent to the voters not expressly contained in the proposition voted on."[19] "An interpretation which would make portions of the Act an absurdity and render other parts meaningless should not be made."[20]

Additionally, "[r]egardless of the pre-election intentions of the drafters of the Act, or the views of the individual supporters or opponents of the Proposition, or the explanations of the media, the proposition and its express language became the law of this state when the overwhelming majority of the voters adopted the Proposition. By that law we are bound."[21] "Statements and representations made before a vote on a proposition are not conclusive upon the courts."[22]

Nor can the official ballot title control over the plain language of the Act itself. "The primary rule of statutory construction is to seek and ascertain the intent of the lawmaker, but this intent is ascertained from the words used."[23] One cannot, through statutory construction, "change the directions and requirements embodied in the law as adopted by the people."[24] The official ballot title was not intended to set forth every detail of the proposal.[25] Nor can it because it is limited in the number of words.[26] Even if the Secretary of State could have done a "better" job of summarizing the proposition, that would not have been grounds to change the wording in the type of legal proceeding that is authorized to challenge ballot titles.[27] The ballot title has to be insufficient and unfair in order for a court to change its

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[16] *County of Jefferson v. Quiktrip Corp.*, 912 S.W.2d 487, 490 (Mo. banc 1995).
[17] *Id.*; *State ex rel. Francis v. McElwain*, 140 S.W.3d 36, 38 (Mo. banc 2004).
[18] *Missourians for Honest Elections v. Missouri Elections Comm'n*, 536 S.W.2d 766 (Mo.App. 1976).
[19] *Id.* at 773-74.
[20] *Id*. at 773.
[21] *Id.* at 774-75.
[22] *Id.* at 775.
[23] *Id.* at 775.
[24] *Id.* at 775.
[25] *United Gamefowl Breeders Ass'n v. Nixon*, 19 S.W.3d 137 (Mo. banc 2000).
[26] *Id.*
[27] *Cures Without Cloning v. Pund*, 259 S.W.3d 76 (Mo.App. W.D. 2008); *Missourians Against Cloning v. Carnahan*, 190 S.W.3d 451 (Mo.App. W.D. 2006).

wording.[28] And the wording can only be attacked in a proceeding brought shortly after the certification of the official ballot title.[29]

If there is any conflict between the summary statement portion of the official ballot title and the text of the proposal itself, it is inane to suggest that you can ignore the language in the text and go with the language in the ballot title instead. The text of the Act must prevail. If someone believes the people did not understand what they were voting for, there are other avenues to address that; this rulemaking process is not the proper forum.

B. Areas of Apparent Agreement.

Various stakeholders seem to agree that utilities should use variables consistent with values from a recent rate proceeding or integrated resource planning. It is also understood and agreed, we believe, that one begins, in determining the 1% rate impact by comparing the revenue requirement of providing those additional energy levels with non-renewable energy (adding in environmental regulatory risk costs) to the revenue requirement of meeting the same amount of energy level using least-cost renewable energy (less savings or avoided costs) — the difference between the two or the "**delta**"[30] is the beginning of the calculation.

There appears to be no disagreement that the basis for the calculations is the utility's retail revenue requirement. There have also been no comments at this writing (informal or formal processes) about the inclusion in costs of non-renewables for new or increased emissions allowances that the utility would have to purchase in order to emit air pollutants such as SOx, NOx and CO_2. Also, the avoided costs of gas or coal or buying energy through the spot market should be included in the calculation of renewable energy savings.

What is clear is that the IOU must take the two cost calculations based upon estimates and compare them – ascertain the delta. They are to be compared such that the IOU must abide by the applicable portfolio requirement so long as "the maximum average retail rate increase of one percent" is not exceeded. All the disagreement thus far seems to arise from this phrase.

The words are not defined in the statute. Nor are the parameters for the increase or the averaging set forth in § 393.1030.2(1). Not only do the words in isolation require thought, but then it must be considered whether, used together, that meaning still makes sense and gives effect to the act as a whole.

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[28] *Id.*
[29] Section 116.190.
[30] This term, a common mathematical term, is used throughout the modeling prepared by ICF that is submitted with these comments and so we use it within this document for consistency.

C. What the phrase "maximum average retail rate increase of one percent" cannot mean.

In the informal rulemaking workshop process, one of the stakeholders argued that the increase is cumulative and the averaging is across customer classes. This is simply unreasonable and contrary to the rules of statutory construction. Common sense tells us all that the vast majority of voters of this state are not aware that there are "customer classes." People believe that the rate they are paying is everyone's rate. A lot of people would be surprised to learn that there are customer classes and that, on average, residential ratepayers pay 38% more per kWh than industrial ratepayers do.[31] Given the context of increasing renewable energy portfolio requirements being over time; given that this is an investment now to save in the future, averaging over a period of time makes far more sense and is consistent with the language of the Renewable Energy Standard.

Additionally, not averaging over time but using a cumulative method, as the stakeholder recommended, essentially kills the RES. There would be some addition of renewable energy towards the 2011 percentage, but even that small 2% renewable energy requirement may well not be met under this interpretation.[32] Construing a statute in a manner that gives it no force and effect, that renders it inoperative, is contrary to the rules of statutory construction.[33] Setting aside the proposal to undo what the voters approved, which this Commission must do, I will now discuss its options.

D. Over what time period is the increase measured?

Because the renewable portfolio standard takes place over time, with increases in particular years, the increase has been subject to two interpretations. One would be *cumulative*, meaning, in a simplified explanation, that each year's delta is added onto the sum of the previous years' deltas. It appears to have no end, either, going on forever. As such, and for the reasons noted above (the need to give effect to the RES) the averaging required by the plain language of the statute is very important.

Under the current language of the proposed rule, the increase is *incremental*, from year to year. The delta is recalculated in each milestone year (e.g., 2011, 2014, 2018 and 2021) and *previous*[34] years' deltas are not considered, although the averaging of the impact means the calculations from one year will overlap with another.

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[31] *See* 2009 Annual Report of the Missouri Public Service Commission, p. 22. http://psc.mo.gov/publications-reports/annual-report/116290_all.pdf

[32] Based upon middle of the road or "reference case" modeling by ICF, the non-averaged delta in 2011 would be 1.3%.

[33] *State ex rel. Clay Equipment Corp. v. Jensen*, 363 S.W.2d 666, 670 (Mo. 1963)(en banc).

[34] Future years' deltas are considered, however, through the averaging process, because the method is forward-looking.

Incremental is a forward-looking methodology, consistent with the projections that must be made as between non-renewable energy and renewable energy. It is also consistent with the forward-looking integrated resource planning, from which source data can be extrapolated. A cumulative method essentially counts what has already been passed along in the rates or surcharges to customers. An incremental approach does not do that.

One last issue inherent in a cumulative approach is that it is difficult to average a cumulative amount. A cumulative amount does not lend itself to averaging without the risk of double counting. We will address this is further detail below, so that if this Commission does decide to adopt a cumulative approach (which we advocate against), it avoids the pitfalls of double counting in the averaging.

E. Over what time period should the averaging take place?

Rules of statutory construction require an interpretation that gives meaning to the word "average" — there is a presumption against the use of "idle verbiage or superfluous language in a statute."[35] One cannot simply make the comparison a cumulative one or an incremental one without also averaging it. However, the language does not state over what time period (or a number representing a time period) the delta is to be averaged.

When no definition is provided in the statute, then one applies the ordinary meaning of the term as found in a dictionary.[36] Merriam Webster defines "average" as "a single value that summarizes or represents the general significance of a set of unequal values." It also states average is "the quotient obtained by dividing the sum total of a set of figures by the number of figures."

The proposed rulemaking averages the deltas over 10 years. We actually believe that 20 years seems more appropriate, given that power purchase agreements for renewable energy are generally for 20 years. Additionally, the current planning horizon in the integrated resource planning (and in the current rules undergoing review) is 20 years. The ten years that we earlier proposed was a compromise of sorts because the version we were commenting on had no averaging in it whatsoever and the lumpiness of the portfolio standards needed to be averaged in some way to spread that out and to give some effect to the plain language adopted by the people. The averaging time period has to effectively spread out the lumpiness inherent in resource acquisition when you have percentage increases every few years.

[35] *Turner v. State*, 245 S.W.3d 826, 828 (Mo. banc 2008).
[36] *Great Southern Bank v. Director of Revenue*, 269 S.W.3d 22, 24-25 (Mo. banc 2008).

F. How should the averaging be calculated — the need for clear language in the final order of rulemaking.

This is a critical aspect that we admit is not adequately clear in the rule language we submitted. Averaging can be done in various ways and the rule needs to set forth the method so it is clear from the beginning. The IOUs need this predictability in order to plan properly and know what will happen when they go into a cost recovery proceeding (RESRAM). It is in no one's interest to have vagueness as to the precise method of averaging.

Taking from ICF's reference case scenario, the calculation would be as follows:

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	**AVERAGING APPROACH**															
2	**PRELIMINARY DRAFT**															
3		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
4																
5	% RENEWABLE IMPACT (Cumulative)	0.0%	0.0%	1.3%	1.2%	1.6%	3.1%	1.9%	2.5%	2.3%	4.1%	3.7%	3.3%	4.7%	4.3%	3.9%
6	% RENEWABLE IMPACT (Incremental)	0.0%	0.0%	1.3%	-0.1%	0.5%	1.6%	-1.0%	0.7%	0.0%	2.0%	0.0%	-0.1%	1.7%	-0.1%	-0.1%
7	Delta (Renewable Less Non-Renewable Option) Cumulative	-	-	32	31	44	92	61	86	86	171	169	165	255	250	245
8	Delta (Renewable Less Non-Renewable Option) Incremental	-	-	32	(1)	13	48	(31)	25	1	84	(2)	(3)	90	(6)	(5)
9	Net Base Revenue Requirement (Millions)	2,279	2,382	2,493	2,612	2,781	2,966	3,185	3,498	3,830	4,184	4,559	4,963	5,395	5,857	6,349
10																
11																
12																
13	**10 Year Average**															
14	**CUMULATIVE**															
15	NET EFFECT (%)	10		0.13%	0.12%	0.16%	0.31%	0.19%	0.25%	0.23%	0.41%	0.37%	0.33%	0.47%	0.43%	0.39%
16	NET EFFECT (Millions)			3.2	3.1	4.4	9.2	6.1	8.6	8.6	17.1	16.9	16.5	25.5	25.0	24.5
17																
18																
19	**INCREMENTAL (Millions)**															
20	2011 INCREMENT OF CAPACITY	10		3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25	3.25			
21	2014 INCREMENT OF CAPACITY						4.83	4.83	4.83	4.83	4.83	4.83	4.83	4.83	4.83	4.83
22	2018 INCREMENT OF CAPACITY										8.42	8.42	8.42	8.42	8.42	8.42
23	2021 INCREMENT OF CAPACITY													8.98	8.98	8.98
24	NET EFFECT			0.13%	0.12%	0.12%	0.27%	0.25%	0.23%	0.21%	0.39%	0.36%	0.33%	0.41%	0.38%	0.35%

Under the current language, given it is the incremental method, you take the revenue requirement delta in a given milestone year (row 8) and spread it out over ten years going forward (the applicable year plus the subsequent 9 years). For example; in 2011, the delta in cell D8 is divided by 10 and that amount is put in years 2011 through 2020 (see row 20). Therefore each of those years is 1/10th the delta revenue requirement for 2011. You do this for each year in which renewable energy sources would be added to the portfolio.[37] Then you add up the averaged delta amounts in rows 20 through 23 in the given year and divide it by net revenue requirement under

[37] For instance, if only added in the portfolio increase year, you could only do it in that year. This is an assumption that was used by ICF to keep the example modeling simple. The key would be doing it consistently.

the non-renewable scenario (row 8 in the given year) and convert that decimal to a percentage.

Although not shown in the above, the ICF model also has the capacity built in to do this using a 20 year averaging. The actual percentage impact naturally varies depending on which scenario is used or, outside of a scenario, which variable parameter values are selected (in the electronic version, those are drop-down menus).

As you can see from the above inserted partial screen shot, the cumulative method that ICF used divides the cumulative amount (row 7) by 10 (row 16) and then divides row 16 by row 9 — this last step is the same between the methods. If you used the same averaging method for cumulative as for incremental, you would be double and triple counting due to the nature of cumulative — it already includes the previous amounts. This is why, to get a ten year average, you need to simply divide by ten. Should the Commission choose to use a cumulative increase method, this is why the averaging methodology is extremely important — to avoid duplicating the deltas.

V. Cost Recovery and Pass-through of Benefits.

A. The language requiring a line item on customer bills should be eliminated or at least clarified.

We propose the elimination of the current language requiring a line item on customer bills found in 4 CSR 240-20.100(6)(A)6.C. and (6)(A)7.C. The reason is that the amount is the RESRAM amount, not the delta. The RESRAM amount inherently includes the revenue that would have been spent on non-renewables as opposed to the increased amount over that amount that is truly what could legitimately be attributed to RES. The current language artificially increases the amount attributable to RES, going far beyond the delta. As such it is confusing at best and likely misleading.

Using Commissioner Davis' example from his dissenting opinion will serve to illustrate the point. If the current electric charge is $100/month and the non-renewable scenario would be $20 more per month, and renewables can add another $1.20 to that bill, it appears the line item amount would be $21.20, which is not the cost attributable to RES compliance. The only new cost attributable to RES compliance is the $1.20. This is because the $21.20 necessarily includes what would have been spent in the non-renewable scenario. Such a line item would exaggerate the additional costs a customer is paying for RES compliance by a significant amount.

Additionally, no other electric energy source is separated out on a bill. Current bills do not break out separate amounts based upon coal, nuclear, hydroelectric or natural gas (for electric energy). There is no reason to create a line item for renewable energy electricity when that is not done for any other electric energy source. The Compliance Reports will be available to everyone. A line item requirement also

increases costs to the IOUs, costs that go to administration as opposed to purchasing renewable energy.

We prefer that the line item be dropped, but in any event want to ensure that the line item requirement does not distort the actual net cost of RES compliance.

B. The Dual Track RESRAM Proceedings.

We want to raise attention that the method for determining which track of the dual track RESRAM proceeding a utility must utilize (4 CSR 240-20.100(6)(B) or (C) is based on a revenue increase amount that includes amounts that would be attributable to non-renewable energy if not for the RES to ensure this is the Commission's intent. The rationale is similar to that just discussed as regards the RESRAM line item. Because the threshold is "an actual increase in utility revenue requirements" and less than 2% sends an IOU into one type of RESRAM and 2% or higher sends them into another, it is very likely the IOU will be sent into the 2% or higher proceeding because the increase is not just the delta but includes the amount that would have otherwise been spent on non-renewables. Again, assuming a base of $100, the combination of non-renewables plus the delta could not exceed $1.99 or it would be pushed into the more difficult RESRAM cost-recovery track. We want to ensure that this is what the Commission intends and that it strikes a proper balance between the interests at stake, giving effect to the requirement in the RES that there must be a provision for recovery outside the context of a regular rate case.

VI. The RES Compliance Plan should be as open as possible for meaningful review.

Our comment here is short but important. We recommend that in the actual carrying out of the RES Compliance Plan filing and review process in 4 CSR 240-20.100(7)(B)-(F), that as much transparency be maintained as possible (e.g., prohibiting the overuse of designation of information as confidential or highly confidential) to ensure a meaningful review without interested parties having to intervene in the "case", especially if an investor owned utility is claiming that it cannot meet the RES percentage without hitting the Retail Rate Impact.

VII. Proposition C being implemented with the geographic sourcing intended by the voters and the in-state multiplier will create jobs in Missouri.

A. Job creation, income and tax revenues from renewable energy generation facilities – construction and ongoing operations.

We can provide anecdotal information from projects already completed in Missouri, but we understand that comments will be submitted by at least one labor group regarding the job creation among their constituency during the recent construction of a wind farm. One thing that is important to keep in mind is that in Missouri, the wind

capacity is generally strongest in Northwest Missouri, and wind farms are located in rural areas. A wind farm can be the biggest non-agriculture investment that a rural county in Missouri may see.

A wind farm creates construction jobs for up to a year, pulling its labor force not only from within the state but also from within the region of the state and even the specific county. Those construction workers spend their money locally when they are there, further providing a stimulus to the local economy. The company will spend money locally on supplies and services needed for the construction phase and may use local businesses as much as possible. Sand, gravel, asphalt and concrete are common materials needed during the construction phase and to maintain access roads for years to come and can usually be obtained locally. Landowners who agree to have turbines on their property receive lease payments for 20 years or more, generating more local income per acre than typical agricultural uses may generate. And local property tax revenues, even if there is some abatement, remain a strong benefit to the local taxing districts.

We have found no study of the projected economic benefits of Proposition C for Missouri. There is a recent study for Illinois, however ("ISU Study").[38] Illinois' renewable energy standards require 2% by June 1, 2008, with an increase of 1% for each year thereafter (10% by June 1, 2015) and then increasing by 1.5% each year to at least 25% by June 1, 2025.[39] The ISU Study looked at the economic effects of 1,118.76 MW of wind generating capacity in Illinois, which reflected already-online wind projects. The most recent wind project in Missouri is a 150 MW facility. This facility plus six more of the same scale would result in 1,050 MW of wind generation capacity in Missouri (not counting already-existing farms). That is substantially close to the MW capacity in the ISU Study. According to the ISU Study, 1,120 MW of wind generating *capacity* resulted in the following[40]:

- Over 6,000 FTE jobs during construction periods with a total payroll of over $306 million;

- Approximately 300 permanent jobs in rural areas of the state with a total annual payroll of over $15 million;

[38] David G. Loomis, Ph.D., and Jennifer L. Hinman, Center for Renewable Energy, Illinois State University, *Economic Impact: Wind Energy Development in Illinois*, June 2009. A copy can be found at: http://renewableenergy.illinoisstate.edu/wind/downloads/072409%20IWWG%20Economic%20Impact%20Report.pdf.

[39] 20 ILCS 3855/1-75(c)(1), first enacted in 2007.

[40] The ISU Study uses the Jobs and Economic Development Impact (JEDI) Wind Energy Model developed by the National Renewable Energy Laboratory. The JEDI model uses state-specific industry multipliers from IMPLAN (IMpact Analysis for PLANning, a widely-used economic modeling system).

- $11.4 million in annual property tax revenues for local taxing districts, including school districts;

- $4.36 million annually in extra income for landowners leasing their land to the wind farm;

- Generation of total economic benefit of $1.9 billion over the life of the projects.

One can readily imagine this as nearly $2 billion in economic benefits to Missouri. This MW capacity could occur after the 2014 portfolio percentage of 5%.[41] For the 2011 portfolio, if three 100-150 MW farms could provide a substantial portion of the non-solar carve out percentage, that would be akin to approximately $800 million in economic benefits to Missouri, based on the ISU Study. The ISU Study is the best we have right now, aside from anecdotal evidence, to estimate economic benefit, so we believe it is an important consideration. Although Missouri numbers may be somewhat different, it is a neighboring state and gives a good idea of the scale of economic benefit Missouri could receive for in-state renewable generation, which the people clearly wanted to occur by including the 1.25 multiplier.

B. Creating a climate for additional green jobs.

In various conversations or hearings on renewable energy in the last year or so, there are those that scoff at renewable energy or the environmental benefits it has. They may even express their distaste for Proposition C. But then, almost inevitably, the person adds a comment along the lines of, "But we would like to have a turbine manufacturer here in Missouri." Renewable energy component part manufacturers locate their facilities where their customers are. They locate their facilities where the state has shown itself to be a green state, one that supports renewable energy. But this Commission does not have to take our word for it. Just look to Kansas.

Siemens broke ground on a 300,000 square foot wind turbine nacelle assembly facility that is scheduled to be operational this fall and employ 400 "green-collar employees." Kansas, as previously noted in this submission, enacted RES in 2009. Siemens announced its intention to locate its plant there and broke ground. This year there was a bill in the Kansas legislature that would have regulated the development and permitting of wind generation projects in Kansas. It would have imposed many statewide siting restrictions (where can turbines be located, mandatory setbacks, etc.); even counties opposed the bill, wanting to retain local control. And Siemens'

[41] According to a report from the PSC, for CY2008, all IOUs sold 59,084,266 MWhs of electricity in Missouri. The estimate of MW capacity for 2014 is based on this amount, reduced by the solar carve out amount, then conversion to MW and accounting for net capacity of wind farms, and also the 1.25 in-state multiplier. It is intended to be a fairly rough estimate.

President and CEO also voiced the company's concerns that Kansas, which had represented itself to be a green state open to wind development, did not seem to be staying true to that representation by pursuing the legislation in question. A copy of the letter regarding the Kansas bill is attached in *Appendix D* – it was part of the public record. It is from the source and should be required reading for those who don't want green energy but do want green manufacturing jobs.

Missouri cannot be anti-RES and anti-renewable and anti-wind and be attractive to a renewable energy manufacturing facility. It would be saying no to the opportunity for those jobs. And the people of this state took it upon themselves to enact RES because they wanted renewable energy and they wanted the benefits that come with that. Missourians were saying "Yes" to green jobs when they voted to adopt Proposition C. This Commission should not go against what the citizens voted for; this Commission should not say "no" to jobs, whether the jobs created by the renewable generation facilities or the jobs that those facilities attract.

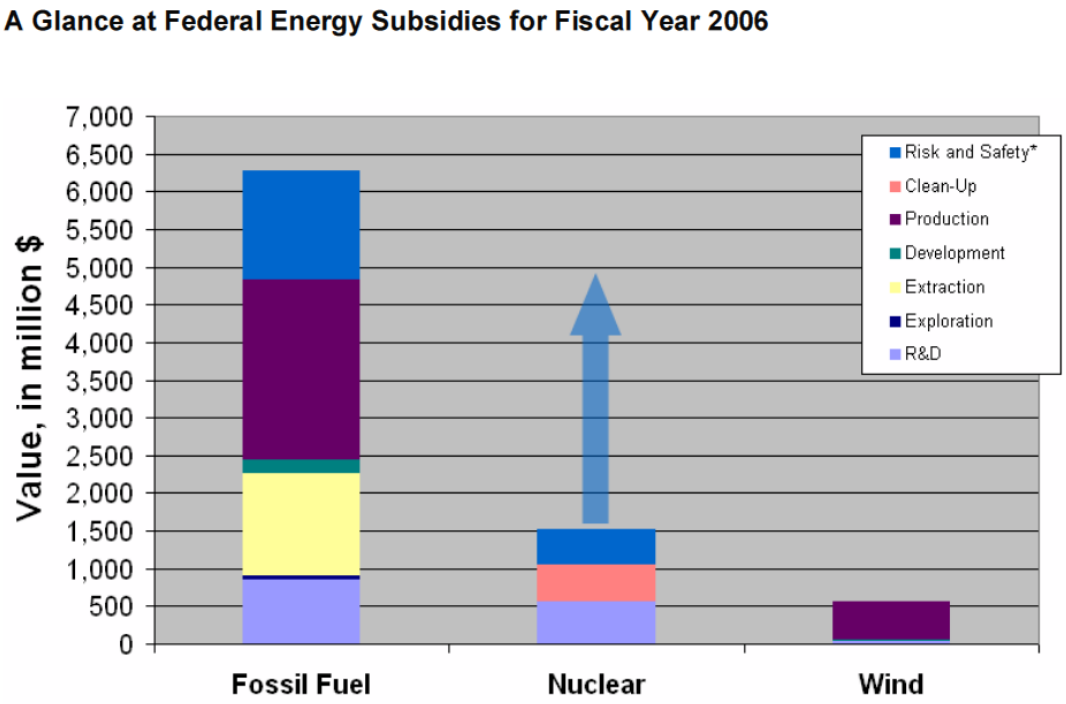
VIII. Clearing the air about energy subsidies — every energy technology is supported by the government.

In Commissioner Davis' Dissent to Authorize Filing of Renewable Energy Standards Rules, there is a section suggesting that wind farms receive "welfare" already and should receive no more incentives through the Proposition C rules.

Commissioner Davis aptly notes that subsidies are hidden costs that ratepayers do not see on their actual electric bill. They are provided by government and therefore paid for by taxpayers. Commissioner Davis specifically notes the Federal Renewable Energy Production Tax Credit. It is true that such a federal tax credit exists. It was first enacted in 1992 and has always had an expiration provision, requiring action by Congress to reauthorize it. It has had to be reauthorized six times since 1992. Commissioner Davis calls for a true reckoning of "wind welfare costs" by pointing to this tax credit.

What we wish to convey to the Commission is that if federal governmental subsidies for renewable energy, or even specifically for wind energy, are going to play a role in its determinations for the Final Order of Rulemaking, then those subsidies must be considered in proper context. Every energy technology is supported by subsidies from the federal government. Wind energy is no exception. But subsidies for wind should be put into proper perspective. The American Wind Energy Association compared the level of subsidies in FY2006 and the results are in the following graph:[42]

[42] http://www.awea.org/pubs/factsheets/Subsidy.pdf



Even this is only a one year snapshot; it is far more appropriate to consider a variety of subsidies and the subsidies that energy sources have received over time, and at which times in the development of those energy sources. While there has been a recent policy shift to support renewable energy, subsidies for energy in one form or another have been around for a long, long time. They may be higher in the years when a newer technology is being developed, based upon the policy goal to encourage its development more rapidly or to increase the amount of energy generated by that technology.

But there is no mistaking that even the technologies that have been around for many, many years — coal and natural gas — and the relatively more recent nuclear energy, benefitted from and continue to benefit from federal government subsidies. Nuclear power was heavily subsidized when it was a nascent technology — it may have never occurred without some of that subsidization. The gist of this is that if there is to be a "true reckoning" of the total costs of energy, then one cannot isolate wind or even renewable energy; one must look at all subsidies for all types of energy. In *Appendix E* to this document, we have set forth information regarding subsidies for coal, natural gas and nuclear.

In summary, the existence of subsidies really should have no role in this Commission making rules to carry out the Renewable Energy Standard. There is no language in the statutes suggesting that the Commission take into consideration subsidies by energy source in making these rules. The Commission's role here is to carry out what the people voted for, as set forth in the language of the Renewable Energy Standard,

not to second guess the wisdom of what the people voted on or to thwart the intentions of the people by the rules promulgated to carry out the standard.

Nevertheless, one Commissioner has raised the issue so we thought it prudent to provide a bit of the rest of the story. And again, we are not advocating against any of the energy subsidies to coal, natural gas or nuclear that we have set forth. Nor are we trying to set forth an exhaustive list for any energy source. Our point is solely to note that if "hidden costs" are to be a consideration of this Commission or any member thereof as it makes its decisions about this Proposed Rulemaking, then subsidies across all energy sources must be taken into account and not just subsidies to renewable energy or wind energy.

VII. CONCLUSION

While RES is a mandate, costs still must be prudently incurred within the rate impact parameters, and there is most definitely competition in the renewable energy production market. At the same time the eight companies I represent have come together on these comments to the RES rules, they are at the same time competing with each other for power purchase agreements with IOUs, public utilities and electric cooperatives in Missouri and elsewhere. The open market in renewable energy ensures competition and allows Missouri's IOUs, and the ratepayers, to get the best deal possible.

We appreciate the opportunity to provide comments to the Commission as it moves forward with its statutory mandate to adopt rules to implement Missouri's Renewable Energy Standard.

Best regards,

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Khristine A. Heisinger

Enclosures

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