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October 27, 2009

Mr. Steven Reed
Secretary of the Commission
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65102-0360

Re: Proposition C Rules

Dear Mr. Reed:

This letter is to express AmerenUE's concerns about the draft rule addressing Electric Utility Renewable Energy Standard Requirements that the Commission has been considering for publication as a proposed rule. AmerenUE is concerned the draft rule being considered by the Commission is contrary to the statute authorizing the rule—Proposition C (Section 393.1025 RSMo. *et seq.*)—and contrary to the public interest in several respects. We believe it will be helpful to explain our concerns to the Commission before a proposed rule is published in the *Missouri Register.*

First, and most important, with respect to cost recovery, Proposition C unambiguously provides that utilities must be able to fully recover their cost of compliance with the statutes. Specifically, Section 393.1045 provides: "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.*" (emphasis supplied). The statutes also require the Commission to provide for "…the recovery outside the context of a regular rate case of prudently incurred costs and the pass-through of benefits to customers of any savings achieved by an electrical corporation in meeting the requirements of this section." Section 393.1030 2(4).

The draft rule provided by the Staff, which contemplates a cost recovery mechanism for renewables similar to the Environmental Cost Recovery Mechanism rule, provides no such assurance of cost recovery. For example, the Staff's draft rule provides that in deciding which incremental compliance cost components to include in a recovery mechanism outside of a rate case (RESRAM), the Commission can consider "the magnitude of the costs and the ability of the utility to manage

the costs." (Section (6)(A)(1)). The draft rule would also permit parties to completely oppose the establishment or continuation of a RESRAM, and permit the Commission to determine which portion of the costs are recovered in base rates and which are recovered through any RESRAM which might be approved. The only "test" that a cost must pass before it must be recoverable is that the cost has been prudently incurred. The draft rule attempts to impose additional tests or screens on cost recovery that are not contemplated by the statute.

Overall, the cost recovery provisions of the draft rule fall short of the cost recovery standards mandated by Proposition C. Requiring recovery through a full-blown 11-month rate case effectively means that many of the costs will never be recovered at all due to the substantial delays associated with the ratemaking process. Given the statute's terms, the Commission should implement a simple cost tracking mechanism which in all events permits utilities to recover their costs of compliance (plus interest on the unrecovered balance) outside the context of a rate case through a rider mechanism. The Commission already has an appropriate and workable model for such a rider mechanism, which is the ISRS model applicable to natural gas and some water utilities, and should follow this model in complying with the statute. Otherwise, utilities will not be allowed to recover all of their prudently incurred compliance costs, as required by Proposition C.

Second, AmerenUE requests that the Commission clarify the language limiting the location of eligible renewable resources. Specifically, Section (2)(A) of the Staff's proposed rule requires a renewable resource to be located in Missouri or "delivered to Missouri electric energy retail customers" in order to be eligible to be counted toward the requirements of Proposition C. AmerenUE is concerned that the term "delivered to Missouri electric energy retail customers" may be too limiting, and may suggest that electricity from a particular facility must be physically tracked to Missouri. Instead, AmerenUE suggests that the renewable resource should be "deliverable to a Missouri electric utility or deliverable into a Regional Transmission Organization under whose tariff a Missouri electric utility is served." This language will ensure, for example, that the renewable projects AmerenUE has already invested in, which are deliverable into the Midwest ISO will qualify under the rules.

Finally, AmerenUE opposes the burdensome auditing requirements applicable to renewable energy resources to be owned by an electric utility or its affiliate, that are contained in paragraph (2)(G) of the Staff's draft rule. These requirements appear to be intended to unnecessarily and inappropriately handicap utility-owned renewable generation to provide an advantage to renewable generation owned by third parties. Utility owned renewable generation should be subject to after-the-fact prudence audits like other forms of generation. It should not be subject to the additional front-end audit contemplated by the Staff's draft rule.

AmerenUE requests that the Commission consider these comments before it proposes a rule for publication in the *Missouri Register.* If the Commission would like, AmerenUE would be happy to answer any questions the Commission might have, or provide further elaboration of these comments at a Commission Agenda meeting.

Sincerely,

Thomas M. Byrne
Managing Associate General Counsel

TMB/alt

cc: Legal file