BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Amendment of	)	
4 CSR 240-20.065 and 4 CSR 240-20.100,	)	
Regarding Net Metering and Renewable	)	File No. EX-2014-0352
Energy Standard Requirements	)	

COMMENTS OF RENEW MISSOURI

We thank the Commission for the opportunity to comment on the proposed rulemaking that was published in the Missouri Register on May 1, 2015. We support many specific proposed changes and object to several specific proposed changes, as put forth below.

4 CSR 240-20.065, NET METERING

Definition of Operational, Subsection (1)(G)

> **"Operational means all of the major components of the on-site system have been purchased and installed on the customer-generator's permises and the production of rated net electrical generation has been measured by the utility."**

(Note that the spelling permises should be corrected to premises.) Renew Missouri asks that "has been measured" be changed to "is capable of being measured." The language in the proposed rule could allow a utility to delay the operational status of a system beyond the date when the solar rebate is reduced or has expired, with the result that the customer would receive a reduced rebate or no rebate. (See below argument re: definition of "operational" in RES rule.)

Interconnection Application/Agreement – Permits from Local AHJ

> **If a local Authority Having Jurisdiction (AHJ) requires permits or certifications for construction or operation of the qualified generation unit, a customer generator must show the permit number and approval certification to the [Utility Name] prior to interconnection.**

Renew Missouri objects to the above addition to the Interconnection Agreement. We believe there is no reason for the requirement, and it could prove to be confusing in practice. The most straightforward way to deal with local AHJ permitting or certification requirements is to let

the local AHJ address them *after* the utility has granted interconnection approval. Otherwise, it may become unclear whether the local AHJ must give a permit or certification first, or whether the utility must grant interconnection first. The simplest way to avoid this confusion is to allow the utility to grant interconnection approval without waiting for local AHJ sign off.

Interconnection Application/Agreement – "Minimum Bill"

> **D. Additional Terms and Conditions**
> **"5) Energy Pricing and Billing** (c) If the electricity generated by the Customer Generator exceeds the electricity supplied by the supplier during a billing period, the Customer-Generator shall be billed for the appropriate *[customer charges]* **minimum bill as specified by the applicable Customer-Generator rate schedule**…"

Renew Missouri strongly objects to the addition of the term "minimum bill," which does not appear in the statute. On the contrary, § 386.890.3(2) provides that a utility shall:

> (2) Offer to the customer-generator a tariff or contract that is identical in electrical energy rates, rate structure, and monthly charges to the contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge that would not otherwise be charged if the customer were not an eligible customer-generator;

The customer-generator is thereby obligated to pay the standard customer charge for the applicable rate class. "Minimum bill," however, means something different. This is illustrated by HB 481 (2015), a bill introduced in but not passed by the General Assembly. As introduced it included the term:

> (5) "Minimum bill", all charges on a customer's bill that are not calculated on a kilowatt-hour basis including, but not limited to, a service charge, customer charge, meter charge, facilities charge, demand charge, billed demand charge, or any other charges billed to customers for services, including special facilities, late fees, and taxes;

The same term, if used in the net metering rule, would be susceptible to the same interpretation. It would allow the utility to impose all manner of charges beyond those applicable

to the individual customer only, and could make net metering prohibitively expensive in direct violation of the non-discrimination clause in the statute.

The Commission should restore the term "customer charges" and delete the reference to a minimum bill.

"Solar Rebate Declaration – 85% Requirement

> "I understand that the solar system must be permanently installed and remain in place on premises for the duration of its useful life - a minimum of 10 years **and the system shall be situated in a location where a minimum of eighty-five percent (85%) of the solar resource is available to the solar system."**

This 85% efficiency requirement has no basis in the statute. Assuming that some level of insolation would be a reasonable regulation under the statute, this is too restrictive. Renew Missouri recommends that the requirement be removed, or reduced to 75% in the alternative.

Solar Rebate Declaration – Notifying Customers of Limited Budgets

The declaration also includes this:

> "I understand that this program has a limited budget, and that application will be accepted on a first-come, first-served basis, while funds are available. It is possible that I may be notified I have been placed on a waiting list for the next year's rebate program if funds run out for the current year. This program may be modified or discontinued at any time without notice from [Utility Name]."

Renew Missouri considers the above customer notice to not correctly reflect the law, and supports its removal from the Solar Rebate Declaration. A customer could read the above to mean that rebates are granted at the utility's sole and arbitrary discretion or according to some fixed budget limitation. Rather, utilities have an ongoing responsibility to "continue to process and pay applicable solar rebates until a final Commission ruling." § 393.1030.3, RSMo. In fact, the very concepts of conditional approval and limited budgets run contrary to the clear language of the statute. While the law does give utilities the ability to cease paying rebates, the burden is on the utility to file their notice 60 days prior to reaching their 1% RRI limit.

Utilities' obligation to continue processing and paying rebates stops only after the Commission makes a "final ruling" that the utility will reach or has reached its 1% RRI limit. Until that time, utilities have no just reason to deny an application by reason of budget. If utilities mistime their 60-day filing and go over their 1% RRI limit, they are specifically protected by the language of Section 393.1030.3, RSMo: "if the continued payment causes the electric utility to pay rebates that cause it to exceed the maximum average retail rate increase, the expenditures shall be considered prudently incurred costs… and shall be recoverable as such by the electric utility."

Accordingly, Renew Missouri supports the deletion of the above from the Solar Rebate Declaration, as it contravenes the letter and intent of the statute.

In the event that the Commission determines that utilities may condition approval of solar rebate applications by reason of "limited budget," Renew Missouri recommends that the Commission substitute a notice such as the following:

> Solar rebate funds cannot be guaranteed for their System. The Company will use the following notice in this event:
>
> > *"[Utility Name] cannot guarantee solar rebate funds for your System. [Utility Name] has filed its sixty-day notice of reaching its annual retail rate impact limit pursuant to Section 393.1030, RSMo. You may still receive a solar rebate if: a) the Public Service Commission determines that [Utility Name] has not yet met its annual retail rate impact limit; b) additional rebates become available due to other qualified solar systems dropping out of the reservation queue; or c) additional rebates become available at the start of the next calendar year."*

4 CSR 240-20.100, RENEWABLE ENERGY STANDARD

Definition of "Operational" – Subsections (1)(J) and (4)(M)

This is the same as our above comment regarding 4 CSR 240-20.065(1)(G). Renew Missouri incorporates here by reference its comment above.

Failing to change the RES rule's definition of "operational" from "has been measured" to "is capable of being measured" could lead to negative outcomes. For instance, the proposed language in Subsection (4)(M) could allow a utility to delay measuring the output of an installed system in order to pay out the lower, "post- June 30th rebate amount" even though the customer's system was otherwise ready for interconnection. For this reason, Renew Missouri supports the inclusion of the proposed language in (4)(M) *only if* the definition of "operational" is revised to mean "is capable of being measured."

Our suggested definition for "operational" is supported by language already in the rule. For instance, the last phrase of Subsection (3)(C) and the last sentence of (4)(L) both refers to a utility "confirming" that a customer's system is operational. In order to make logical sense, the status of "operational" must exist before a utility can confirms such a status. And as noted above, changing the definition to "is capable of being measured" removes the possibility that a customer may receive a lower rebate amount because of the utility but through no fault of their own.

<u>Definition of "Renewable Energy Resource," Subsections (1)(N) and (2)(A)1</u>

> Renewable energy resource(s) means, **when used to produce** electric energy, [*produced from]* the following: …

Renew Missouri opposes the above proposed changes, as it is in contravention of the statute. Section 393.1025(5), RSMo makes it clear that "renewable energy resource" refers to "electric energy" itself, not a generation facility or type of electric generation unit. In order to be consistent with the language of the RES statute, "renewable energy resource" cannot be modified to mean anything other than "electric energy produced from…"

<u>Geographic Sourcing, Paragraphs 2(A) and (2)(B)2.</u>

Subsections (2)(A) and (2)(B)2) have been designated "*Reserved*" following the Joint Committee on Administrative Rules' (JCAR) disapproval of the original paragraphs. The reserved paragraphs require energy to be delivered to Missouri in order to qualify for RES compliance. The Commission should retain the current "Reserved" designation. The legality of the action of JCAR is still in litigation that could lead to the original paragraphs being reinstated.

Proposed Changes to Subsection (2)(B)

> "If compliance with renewable mandates required by law such as the *[above]* RES*[and RES solar energy]* portfolio requirements would cause the retail rates of an electric utility to increase on average in excess of one percent (1 %) as calculated per section (5) of this rule, then *[above requirements]* compliance with those mandates shall be limited *[to providing renewable energy in amounts that]* so that the cost of them would not cause retail rates of the electric utility to increase on average one percent (I%) as calculated per section (5) of this rule."

The above should refer only to the RES and not to any other potential "renewable mandates." This paragraph, as proposed, would allow other renewable energy mandates (federal, state or local) to be brought within the 1% retail rate impact (RRI) limitation should any such mandate be enacted. This would be a violation of the statute and a mistaken policy. Future RE mandates might have their own cost-control mechanisms or none at all. The legislature that enacts future RE policy or delegates the authority to an executive agency to do so will set the terms. The Commission cannot set future policy itself; to do so would be a legislative act beyond the Commission's authority.

The RRI clause in § 393.1030.2(1) is unique to the RES. It calls for a calculation of the rate impact that is applicable to the RES alone. It is part of this RES and makes no cross-reference to any other mandate. It includes "taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation;" this refers to environmental compliance costs of fossil-fuel generation, which are to be treated as an added cost of such

generation or (what is the same thing) an added benefit of renewable generation. The rule already incorporates greenhouse gas costs in paragraph (5)(B). This would be inappropriate for any new mandate that did not include such a provision. The Commission should not impose a new and potentially contradictory interpretation of the RRI in addition to the one plainly intended by the RES.

Maintaining Solar Rebate Info on Utilities' Websites, Subsection (4)(O)

(O) An electric utility shall maintain on its website, current information related to:
1. The electric utility's solar rebate application and review processes, including standards for determining application eligibility;
2. The solar rebate amount associated with pending applications that have been submitted, but not yet reviewed.
3. The current level of solar rebate payments; and
4. The rebate amount associated with applications that are approved, but where the solar electric system is not yet operational.

Renew Missouri offers strong support for the above proposed addition to Section (4). Such addition will guarantee greater transparency and better ability for solar installers and customers to plan for installation of solar systems.

SUBSECTION (5) OF THE RES

Retail Rate Impact (RRI) - Annual calculation of the RRI

First, Renew Missouri lends strong support to the proposed deletion of the last sentence of (5)(B) as well as the addition of the word "annually" in Subsection (5)(A). Renew Missouri believes that a great deal of transparency and accountability can be brought to the process if utilities are simply required to perform and disclose their 1% RRI calculations annually in both their RES Reports and Plans. Several utilities have already committed to performing the calculation every year without seeking an exemption through the last sentence of (5)(B).[1] Performing the calculation each year allows businesses to better plan for future utility

[1] See example: "Non-Unanimous Stipulation and Agreement," File No. ET-2014-0071.

investments in renewables and solidifies a pattern of best practices for how the RRI is to be calculated year to year.

Under the current rule, the RRI is required to be calculated on only two occasions: in a filing to suspend payment of solar rebates, (5)(F); and in utilities' RES compliance plans, (5)(B) and (8)(B)1.F. The latter is a projection averaged over the future 10 years. Utilities are not explicitly required to establish or prove whether they have reached their 1% RRI limit in a given compliance year.

Renew Missouri believes that the RRI should be calculated for each calendar year and included in the annual compliance report which is due in April of the following year. This would not be burdensome since the utilities have tracked the RRI in the past in anticipation of possibly exceeding it due to the rebates; (5)(F) of the proposed rule assumes that the utilities will be tracking the RRI throughout the course of each calendar year ("If the electric utility determines the maximum average retail rate increase provided for in subsection (5) will be reached in any calendar year…"). The actual RRI for past calendar years will inform the utilities, the Commission and interested parties of the accuracy of the projected RRI in the compliance plan and assist in planning further renewable resource additions.

Renew Missouri therefore asks the Commission to incorporate in subsection (5) a requirement for the annual calculation of the actual RRI for the previous calendar year. This should also be added to the filing requirements for the annual compliance report in (8)(A)1.

<u>Retail Rate Impact - Enforcement of the RRI</u>

Renew Missouri continues to take issue with the way utilities are not correctly or transparently performing the RRI calculation. Many utilities fail to include a calculation at all, let alone one according to the statute. Furthermore no utility to date has even attempted to calculate

the RRI as the statute clearly intends, that is, 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..." § 393.1030.2(1), RSMo. In other words, a utility must perform the RRI calculation by measuring what the utility would have otherwise spent to achieve the same generation and comparing that to its cost of RES compliance. The RES statute is being continuously violated as long as the calculation is not being properly performed. By simply taking 1% of its revenue requirement and claiming that number as its annual RRI, a utility is ignoring and violating the clear language of the statute.

The Commission is specifically charged with enforcement the statute, which includes a duty to police utilities' RRI calculations: "The commission, except where the department is specified, shall make whatever rules are necessary to **enforce** the Renewable Energy Standard. Such rules shall include: (a) A maximum average retail rate increase of one percent, determined by estimating and comparing… [see above]." § 393.1030.2, RSMo. (emphasis added)

Renew Missouri therefore requests that language such as the following (in bold) be added to (5)(F)2:

> "The commission shall rule on the suspension filing within sixty days of the date it is filed. If the commission determines the maximum average retail rate increase will be reached, the commission shall suspend solar rebate payments. **The commission will not suspend payment of solar rebates unless it expressly finds that the electric utility has accurately calculated the retail rate impact in the manner prescribed by this subsection (5)**."

Similarly, Renew Missouri recommends an addition to Subsection (8)(B)1.F to require that the RRI be included in utilities' annual RES plans. RES plans should not only include "a detailed explanation of the calculation of the RES retail impact limit," but should also include the RRI calculation itself.

<u>Retail Rate Impact – Future Environmental Risk</u>

We support the revisions made to subsection (5)(B) of the rule. However, we would like to address an omission from the rule.

The statute, § 393.1030.2(a), RSMo, calls for "taking into proper account future environmental regulatory risk **including** the risk of greenhouse gas regulation" (emphasis added). Despite this plain language, the rule has only ever included greenhouse gas risk alone. Additional costs have been imposed since the law passed in 2008 and will be imposed in the future under the Clean Air Act, Clean Water Act, and other regulatory regimes (e.g., NAAQS, MATS, coal combustion residuals rules, effluent limitation guidelines and the Clean Power Plan). Renewable energy's true value is not recognized unless these avoided costs of renewables as compared to fossil generation are accounted for.

The statute will not be properly implemented, and the 1% RRI will be drastically underestimated, until this omission is corrected. Renew Missouri asks the Commission to fully provide for all environmental compliance costs in the rule. This can be done by devising an adder, using utility IRPs or annual IRP updates, or some other method.

Subsection (5)(A) – Change Reference to "effective date of the rule"

> **The retail rate impact shall exclude renewable energy resources owned or under contract prior to *the effective date of the rule*. [emphasis added]**

As a small aside, Renew Missouri believes that the reference to "the effective date of the rule" be changed to a date certain, such as "April 2011." Such a change would avoid confusion as to whether the "effective date" refers to the original rule or the revised rule that will result from this proceeding.

Subsection (5)(D) – Reducing/Eliminating Unbundled RECs When Reaching the RRI

> **(5)(D) "**When adjusting downward the proportion of renewable energy resources **in accordance with this paragraph**, the utility shall give first priority to reducing or

eliminating the amount of RECs not associated with electricity delivered to Missouri customers."

Renew Missouri supports the inclusion of the above paragraph in the rule. We believe it will result in limiting the waste of money that could otherwise be spent on actual generation delivered to Missouri. Renew Missouri recommends adding the phrase in bold above in order to avoid any misinterpretation that there might be another occasion on which the amount of renewable resources could be adjusted downward.

Subsection (5)(G) – Carry Forward Provision

> **…This amount shall be calculated as the positive or negative difference between the actual costs of RES compliance and an amount equal to *1% of the revenue requirement for that year* for the non-renewable generation and purchased power portfolio from its most recent annual RES compliance plan filed pursuant to Section (7)(B) of this rule. [emphasis added]**

The proposed "carry forward" provision above employs the phrase "1% of the revenue requirement for that year" in a way that would run counter to the language of the RES statute concerning how the 1% RRI is to be calculated. The RRI calculation, as prescribed by the RES statute, is intended to estimate 1% more than what the utility otherwise would have spent but for their investments in renewable energy. This involves a comparison of two scenarios: an RES-compliant scenario and a hypothetical non-renewable scenario using traditional resources to meet the same level of demand. The concept of "1% of a utility's annual revenue requirement" bears no connection to the 1% RRI as spelled out by the statute and Section (5)(B) of the rule, and its inclusion could be extremely misleading.

Renew Missouri proposes that the phrase "1% of the revenue requirement for that year" be replaced by "1% cap, as defined in section (5)(B)." This would achieve consistency, as this phrase is used at the end of Subsection (5)(G).

ENFORCEMENT OF ANNUAL COMPLIANCE REPORTS AND PLANS

The current rule provides no regulatory method for correcting deficiencies, but rather relies on the Commission's complaint process as the primary vehicle for enforcement. Under (9)(A) and 4 CSR 240-2.070(1), the Commission, Staff, OPC or any party that "feels aggrieved"—and has the resources to do so—must resort to a complaint as the sole remedy. "Any allegation" means any deficiency the complaining party cares to raise; it is not a guarantee that deficient compliance will be remedied. Moreover, in previous compliance dockets, the Commission has made clear that it does not intend to take action on comments. This places the burden and cost of RES enforcement on other parties, often non-governmental parties.

The only possible alternative, Subsection (8) on annual compliance reports and plans, sets forth a process that is open-ended and incomplete. The Commission opens a repository docket and gives "general notice" of the utility's filing (Subsection (8)(C)); Staff files a report identifying any deficiencies (Subsection (8)(D)); OPC and other parties may comment (Subsection (8)(E)); and finally Subsection (8)(F) provides, "The commission shall issue an order which establishes a procedural schedule, if necessary." What the procedural schedule is for is not indicated. There is no explicit provision for a possible hearing nor, most importantly, for an order that corrects deficiencies.

We noted above that the Commission is charged by the statute with enforcing the RES. § 393.1030.2, RSMo. We ask that the Commission put some teeth into the compliance process by, for example, amending (8)(F) to read as follows:

> "(F) The Commission shall issue an order which establishes a procedural schedule **to allow time for the electric utility, staff and interested parties to resolve deficiencies, and for a hearing if necessary. The Commission shall issue a final order directing that any remaining deficiencies be corrected or that the compliance report and compliance plan be approved. Before approval of a compliance report and plan, the commission shall expressly find that the electric utility has accurately calculated the retail rate impact in the manner prescribed by subsection (5)."**

Subsection (9)(A) could be deleted or amended to read:

"(A) Any allegation of a failure to comply with the RES [requirements] [shall] may be filed at any time as a complaint under the statutes and regulations governing complaints."

* * *

Accordingly Renew Missouri submits the above comments for the Commission's consideration regarding its Proposed Rules regarding the Net-Metering and Easy Connection Act at 4 CSR 240-20.065 and the Renewable Energy Standard at 4 CSR 240-20.100.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 1st day of June, 2015.

/s/ Andrew J Linhares

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