# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

## DISSENT OF COMMISSIONER JEFF DAVIS TO THE FINAL PROPOSED ORDER OF RULEMAKING FOR 4 CSR 240-20.100 AND 4 CSR 240-3.156

I respectfully dissent with the majority of my colleagues in the final enactment of these rules to implement "Proposition C" as passed by Missouri voters in the November 2008 general election. This dissent should not be taken as my opposition to the development of renewable energy sources. My opposition to these rules as they have been adopted by the majority of this Commission is as follows:

(1) Portions of the rules violate Section 536.014 (RSMo 2000) in that they conflict with state law and are so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on the utilities affected and ultimately their ratepaying customers.

(2) In my opinion, these rules grossly understate the costs of utility compliance for Missouri's four investor-owned utilities and fail to state the impact, both positive and negative, to a number of businesses and probably a few public entities affected by these rules. As such, these rules violate Sections 536.200 and 536.205 (RSMo 2000) in that the fiscal note is incomplete in that it fails to list those entities.

(3) This is bad public policy. We are going to be giving huge subsidies to wind and solar developers as well as people who install these systems on their homes and all the other customers will be paying for these jobs. In short, the rules redistribute wealth from one group of consumers and possibly the shareholders to another. That and the sheer amount of cost involved are unconscionable.

**AREAS WHERE THE MAJORITY OF THE MISSOURI PUBLIC SERVICE COMMISSION EXCEEDS ITS STATUTORY AUTHORITY WITH THIS RULEMAKING:**

I. **4 CSR 240-20.100(4)(H) exceeds the statutory authority of the Commission in that it adopts a standard offer contract requiring electrical corporations to buy solar-renewable energy credits (S-RECs) from anyone, which is in direct conflict with Section 393.1030.1 that plainly states "A utility may comply with the standard in whole or in part by purchasing RECs."**

II. **4 CSR 240-20.100(2) requires electric energy or RECs associated with electric energy to be generated by plants either located in Missouri, or if located outside Missouri, the renewable energy resource has to be sold to Missouri customers. One again, The only reference to a requirement of this nature can be found in Section 393.1030.1, which states in pertinent part: "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."**

**In essence, this statement requires the utility to generate or purchase the percentage of renewable energy it needs based on its sales to all Missouri customers; however, that is a different standard than requiring the utility to actually sell the renewable energy to consumers. Moreover, the statute provides an alternative means of compliance – RECs. This provision effectively eliminates the difference between RECs and generation, which is clearly beyond the scope of the statute as approved by the voters.**

**THE MAJORITY OF THE MISSOURI PUBLIC SERVICE COMMISSION ALSO FAILED TO COMPLY WITH SECTIONS 536.200 AND 536.205 IN AT LEAST TWO RESPECTS:**

I. **The fiscal note provided by the Missouri Public Service Commission is grossly inadequate in that the entire cost of the rule will far exceed the $51,000,000.00 estimated annually by the Commission.**

For instance, the Standard Offer Contract (SOC) found in Section 4 CSR 240-20.100(4)(H) requires utilities to buy S-RECs up front with an advance payment for all the S-RECs a customer might generate for the first ten years after installation. The record demonstrates that the lowest price paid for S-RECs is $175 per S-REC and that price ranged to over $600 per S-REC in New Jersey. New Jersey offers a similar SOC and I believe they assume 7 S-RECs a year. AmerenUE assumed 3.5 RECs a year based on a 20% capacity factor. Thus, if Missouri were to adopt the lowest S-REC price and to assume Ameren's estimate is correct, a 10-year up front payment would be $175 x 3.5 RECs x 10 years = $6,125.00. AmerenUE, for instance, has 1.2 million customers. If 1% of those customers jump on the solar bandwagon, AmerenUE would have approximately 12,000 customers asking for a check for $6,125.00 and the cost would be 12,000 x $6,125.00 or $73,500,000. That's just for this one piece of the bill and does not include the cost of complying with any other portion of the rule. A more realistic estimate would be a cost of $250.00 per S-REC x 7 S-RECS (I'm totally guessing Missouri would use the same number as I think is used in New Jersey) x 10 years for an SOC payment on the S-RECs of $17,500.00. Once again, if 1% or 12,000 of AmerenUE's customers take the deal the solar industry wants to offer, we're talking $210,000,000 – an amount equal to roughly 10% of the current customer's bill. Thus, we could have all 1.2 million customers paying an extra 10% rate increase for 12,000 customers to get a $17,500.00 check.

II. This fiscal note violates Sections 536.200 and 536.205 in that it fails to apprise those public entities and private entities affected that they will be paying more than $500.00 a year in the aggregate as a result of the way this rule has been enacted.

Even if we assume that the Missouri PSC's fiscal note is correct and the annual cost is only $51,000,000.00, there are numerous parties affected who did not receive proper notice under the rule. We can assume that AmerenUE's share is roughly half of this $51,000,000.00 estimate for 2012. That's $25.5 million. Now, we know from AmerenUE's last rate case that AmerenUE's total cost of service is roughly $3 billion and one customer – Noranda Aluminum – pays approximately $140 million of that amount. That's roughly 4.67% of the total bill. So, if AmerenUE's rates go up by $25.5 million and Noranda gets hit with 4.67% of that bill, then the numbers work out to roughly a $1.2 million increase for Noranda – that number far exceeds the $500 aggregate threshold in Section 536.205 – and that's just one

customer. There are probably whole classes of customers who will be affected because pursuant to Section 393.1030 of the statute and other statutes, utilities are entitled to recover their prudently incurred costs.

CONCLUSION: THIS RULE IN ITS CURRENT FORM IS JUST BAD PUBLIC POLICY.

I am not against giving some subsidies to encourage the development of wind, solar and other renewable energy sources, but I am against giving away the proverbial store. This rule does that in the most expensive way possible. The majority has caved into the wind and solar industry, giving them pretty much everything they wanted and then in a year or two they'll be wringing their hands at Missouri utilities who will come in seeking what amounts to be double-digit rate hikes because the 1% retail rate impact provision in the statute is illusory. Section 393.1030.2(1) provides the rate cap shall include:

> "A maximum average retail rate increase of 1% 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 resources, taking into proper account future environmental regulatory risks including the risk of greenhouse gas regulation;"

Thus, the standard is 1% over what rates would be otherwise – that's a mighty big hole to try to plug.

This rule may create a few jobs, generate additional income and property tax revenues, but at an unconscionable expense to unsuspecting ratepayers who believed they were protected by a 1% cap in voting for Proposition C. Once up and running, the average wind farm will create 6 – 10 long-term jobs. The solar installers and the people buying their systems will get a benefit and everyone else

gets to subsidize their "greenness." This is wealth redistribution, socialism and should not be tolerated.

The standard offer contract is the worst thing I've seen government do in a long time. This isn't Robin Hood stealing from the rich and giving to the poor, it's a subsidy to those people who can afford to put a $30,000 solar system on their homes and those people who are going to be out there hawking them. This raises an important question: if you can afford a $30,000 solar system, why do you need a subsidy? Further, if we are going to give them subsidies shouldn't we at least require them to deliver their electricity like the majority is attempting to require everyone else to do?

In conclusion, I am thoroughly disgusted. On one hand, we have had Commissioners arguing against the state's best interests so we can adopt a regional approach to cost allocation for new transmission lines in the SPP footprint because all of our neighbors want it. Here, we've gone parochial to create jobs. The only consistency that I see is that we are consistently adopting policies that are going to ultimately raise rates by tens and hundreds of millions of dollars for years to come and then everyone will shake their fist at the utilities for raising their rates to comply with standards we have set.

While the wind developers and solar installers are basking in the glow of their victory today, I hope everyone remembers that the underlying law and the subsequent rate increases we'll all be paying were brought to us by those advocating green energy, but instead makes green money for them while delaying the integration of renewables into our electric systems because of their greed.

**These advocates lied to the people of this state by giving them the impression their rates would only go up by 1%. Then, this position morphed to 1% per year and now it's one percent per year over what rates would or should be. Everyone should remember how these advocates have conducted themselves over the past two years in regard to this issue and remember that course of conduct – promising to keep rates low and then seeking every policy change to make as much money as possible for a couple of narrow interests. This whole debate evolved into something that was not as much about good public policy and promoting the use of renewables as it was them wanting to take other peoples' green money and make lots more of it.**

Respectfully submitted,

Jeff Davis, Commissioner

Dated at Jefferson City, Missouri
On this 2nd day of June 2010.