**BEFORE THE PUBLIC SERVICE COMMISSION**
**OF THE STATE OF MISSOURI**

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

**COMMENTS OF**
**THE EMPIRE DISTRICT ELECTRIC COMPANY**

The Empire District Electric Company ("Empire") hereby files the following comments to 4 CSR 240-20.100, as proposed by the Missouri Public Service Commission ('Commission'):

1. The definition of "RES compliance costs" in Section (1)(N) of the proposed rule should be amended to include an allowance for revenue losses that are directly attributable to compliance with the Renewable Energy Standard. For example, EDE will incur a loss in National Voluntary Renewable Energy Certificate sales revenue as a result of the use of RECs generated at existing facilities to comply with the Missouri Renewable Energy Standard. But under the proposed definition, this loss in revenue would not qualify as an RES compliance cost.

To eliminate this inequity, the definition of "RES compliance costs" should be amended to include not only "capital and expense, directly related to compliance with the Renewable Energy Standard" but also revenue losses directly related to compliance with the Renewable Energy Standard.

2. As currently proposed, the language contained in Section 2(A) of the proposed rule, which would limit eligible electric energy or RECs associated with electric energy to "renewable energy . . . sold to Missouri electric retail customers," is unenforceable. The reason for this is simple: it is impossible to determine whether or not the electrons generated at a renewable energy facility are actually delivered to Missouri customers. A utility can only prove that energy from a renewable source was generated and delivered to the bulk power grid; after that, physics combines electrons from both renewable and non-renewable energy sources and the grid delivers those combined

electrons to customers as electrical energy. This "mixed pool" of electrons will then be consumed by customers on a real-time basis.

The current language of Section 2(A) ignores the physics of what actually occurs on the bulk power grid. To eliminate this defect, Section 2(A) should be modified to allow a utility to count toward its RES requirements the Missouri jurisdictional portion of electrical energy generated by renewable resources that is delivered to the bulk power grid.

The objective of an REC is to provide credits to utilities for electrical energy generated using renewable resources. The fact that it is impossible to "unbundle" electrical energy delivered to customers – by segregating electrons generated using renewable resources from those that are not – need not impede the achievement of that objective. RECs can, and should, be specifically allocated to Missouri customers at the generating source instead of at the point where the electrical energy is utilized or consumed. Such a methodology can be rationally administered and verified while still achieving the overall objective of the proposed rule.

In addition, the Commission should note that the members of the Southwest Power Pool (SPP) are currently working toward the consolidation of all Balancing Authority's (BA). In fact, the Midwest Independent System Operator has already accomplished this consolidation. Unlike today, where each utility is responsible for the dispatching of its generating units (as well as its compliance with North American Electric Reliability Corporation standards), all BA's will be pooled into one, consolidated BA. As such, any renewable energy generator located within an RTO in which a Missouri investor- owned utility is a member should be considered to be an eligible resource for RECs.

3. Nothing in Sections 393.1020 through 393.1050, RSMo, requires an independent auditor to conduct audits, as specified in the proposed rule. Empire believes the functions proposed to be performed by an independent auditor are already being fulfilled by Staff, and ultimately the Commission, in audits that are routinely performed during rate cases. Section 2(G) of the proposed rule does nothing more than add unneeded costs and bureaucracy to the current auditing process. Empire believes,

therefore, that the Commission should delete Section 2(G) from whatever rule is finally adopted in this case.

4. Section 393.1030(3), RSMo, requires Missouri electric utilities to make available a standard rebate offer of at least two dollars per installed watt for new or expanded solar electric systems, up to a maximum of $50,000. Anything beyond this is not required by law and simply subsidizes special interests. In addition, nothing in the statute requires utilities to offer a one-time lump sum payment for S-RECs. Any provisions of Section 4(H) that relate to the Standard Offer Contract should be deleted from whatever rule is finally adopted because they obligate Missouri electric utilities to provide special interest subsidies well in excess of what the law requires. Nothing prohibits a utility from purchasing the S-RECs from a customer if the customer and the utility can agree on an appropriate price, but the Commission's rule should not impose any obligations on a utility that are greater than those required by statute.

Other provisions of proposed Section 4(H) appear to require, payments for S-RECs for periods when the solar electrical system that provides the S-RECmay no longer be generating electricity. Section 4(H) states that the lump sum payable under the Standard Offer Contract is to be based on the ten-year fixed price for S-RECs, which appears to assume that each solar electric system will be in operation and generating electricity for ten years. Elsewhere in that same section, however, is a requirement that the retail account holder "provide a certification to the electric utility of continued operation of the solar electric system *at least five (5) years and not greater than six (6) years after acceptance of the Standard Offer Contract*." (emphasis added) Thus, even though the lump sum payment for the S-REC is based on an assumption that electricity will be produced for ten years, in reality the solar electric system need only generate electricity for five or six years.

This is inappropriate for two reasons. First, in terms of electricity actually generated by a renewable source, the lump sum that an electric utility is required to pay for an S-REC could exceed its value by 40%-50%. Second, it is contrary to the apparent purpose of Proposition C, which is to increase the amount of electricity *actually generated* by renewable sources. For both those reasons, Section 4(H) should be amended to that S-REC's relate only to periods when electricity is actually being generated by a solar electric system – no more and no less.

5. All references to the Standard Offer Contract in Section (4)(I) should be deleted for the reasons stated in Comment 4 above. In addition, for the reasons stated previously herein, Section 4(I) should be amended in a manner that ensures that S-REC's relate only to periods when electricity is actually being generated by a solar electric system – no more and no less.

6. Section 393.1030 2.(1), RSMo, which prescribes how the maximum average retail increase is to be calculated, states as follows:

> *A maximum average retail rate increase of one percent determined by establishing 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.*

The language quoted above requires a utility to take out any current renewable generation resource(s) and replace it with other non-renewable resource(s) before calculating the one percent rate cap.

This task would require Empire to, at a minimum, replace and possibly recreate decisions that were made in the early 1900's surrounding the construction of Ozark Beach. It would also require Empire to make assumptions about which non-least cost option it would have chosen in 2004 as opposed to participating in the least-cost Elk River Windfarm Purchased Power Agreement. As a result of previous decisions dating back to the early 1900's, Empire projects to generate approximately 17.3 percent of its Net System Input (NSI) in 2010 with renewable resources[1], as defined by Section 393.1025(5), RSMo. But, under the proposed rule, before Empire calculates the one percent rate cap it must remove this economical energy and replace it with more expensive, non-renewable energy. In addition, Empire also has to assume this replacement capacity and energy has already been constructed and is simply waiting on someone to purchase it.

[1] Empire currently sells the majority of its RECs to third parties and therefore cannot claim the energy associated with these RECs as renewable at this time. But, for the purposes of this argument, Empire has the ability to achieve this number if it did not wish to sell said RECs.

Elsewhere in Section 393.1030.2(1), Empire is required to also account for future environmental regulatory risk including greenhouse gas regulation. This requirement forces utilities to guess what the price of greenhouse gases will be in the future. Clearly, developing consensus on future environmental costs will be a nearly impossible task which will no doubt be highly debated each year. Furthermore, and most importantly, it is an additional cost to the facetious reference case used to determine the one percent rate cap.

Respectfully submitted,

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