BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Proposed Rule 4 CSR 240-3.162 And 4 CSR 240-20-091, Environmental Cost Recovery Mechanisms.	)))	**Case No. EX-2008-0105**

CONCURRING OPINION OF CHAIRMAN JEFF DAVIS

The Commissioner from Hannibal's opposition to the Environmental Cost Recovery Mechanism (ECRM) enacted in Senate Bill 179 (2005 legislative session) is well documented. Unfortunately for my colleague, the record demonstrates he was completely silent on the issue while it was pending in the legislature. If he had truly been concerned about the ECRM or Senate Bill 179 being anti-consumer, one could reasonably assume he would have voiced his concerns during the public hearings and floor debate conducted while this bill sat in its final form for approximately two months on the Missouri General Assembly's calendar pending its final passage. He cannot say he was unaware of these matters because I personally informed him of Senate Bill 179's progress. It wasn't until much later that he decided to be a consumer advocate.

In regard to expediting rules through the Department of Economic Development, my colleague from Hannibal conveniently fails to recall the former Director of Economic Development routinely sitting on PSC rulemakings for indefinite periods of time and that my predecessor as Chairman actually had the prior PSC General Counsel explore legal options to eliminate the necessity of obtaining the Department of Economic Development's approval before initiating the formal rulemaking process. One can only assume the prior leadership of the Department of Economic Development under the previous Democratic administration and the current one saw things as I see them now, well intentioned but poorly drafted rules in need of a substantial amount of work before they were even ready for public comment. The real truth in this matter is that the Commissioner from Hannibal seems a lot more concerned about trying to score political points with uninformed voters

than he is about trying to make responsible public policy.

In his October 31st dissent on the above referenced rulemaking, the Commissioner from Hannibal best summarizes his position in the opening sentence: "This Commissioner objects to the majority's decision to initiate a rulemaking authorizing a new utility-benefitting (sic) surcharge while ignoring critically important Reliability Rules which have been stalled in the rulemaking process." The implication that reliability has been ignored is patently false and is merely an unfounded pretext for him opposing this rule.

This Commission has already finalized two "critically important reliability rules" in just the last month. Those rules establish vegetation management and infrastructure inspection standards. The only remaining rule to be promulgated is the reliability reporting rule. The two rules already completed are the most essential to enhancing reliability because these are the rules that actually pertain to sustaining the flow of electricity to consumer's homes and businesses; it is these rules that actually have the utilities out performing work - trimming trees on a cycle and inspecting their infrastructure.

It is true these rules do not encompass everything the two sponsoring commissioners originally intended in their original expansive plan to enhance customer reliability by requiring utilities to "gold-plate" their systems. The original rules as contemplated by the minority would have cost ratepayers hundreds of millions of dollars while achieving at best only de minimis improvement in reliability over what was actually adopted. This Commission did its job by giving ratepayers the most value for their money: 80 - 90% of the reliability enhancements contemplated by the original rule at only a fraction of the cost of the rules as originally filed.

There is, in fact, only one rule delayed by the Department of Economic Development – the one related to reliability reporting. Truth be told, this rule contains a lot more than reliability reporting and it is deficient in so many ways this commissioner does not have the time or patience to list them; however, here are three of the most offensive provisions:

(1) The rules seek to require utilities to underground every new electric line without any consideration of economic efficiency or other harmful effects.[1] For instance, what if undergrounding those lines requires the utility to drill through solid rock or tear up a major road in St. Louis or Kansas City? The Missouri PSC has previously adopted such a rule in

[1] See Proposed Rule 4 CSR 240-23.010(3).

the late 1970s, only to subsequently repeal the rule as unworkable because of the extraordinary number of justifiable instances in which it had to be waived.[2]

(2) The rules attempt to require all Missouri utilities to meet the impossible standard of being in the top quartile in terms of national reliability when there is no uniform set of national criteria to which the Missouri PSC can make this comparison on[3]; and

(3) They seek to impose liabilities on utilities without even a cursory determination of fault. In a country founded on the principle that one is innocent until proven guilty[4], I find this provision particularly offensive. Not only does this usurp a fundamental tenet of jurisprudence, it also exceeds the statutory authority delegated to the Public Service Commission.

Reliability reporting, identification of worst-performing circuits and undergrounding of electric lines are important issues that need to be -- and will be -- addressed by this commission, but they must be dealt with in a way that actually enhances reliability in a meaningful and fiscally responsible manner. The fiscal impact statements for the three rules co-authored by my colleagues from Hannibal and Moberly indicate their three rules, if enacted without substantive changes, would have cost Missouri ratepayers utilities an unknown amount of money that could have exceeded $500 million annually. The PSC's most recent annual report notes that the four investor owned electric utilities in this state have fewer than two million customers, so the ultimate cost to utilities and, ultimately, their ratepayers could exceed $250 per customer annually. Even if the utilities inflated their cost estimates by 100%, every ratepayer of a utility regulated by the PSC could be on the hook for an average payment of more than $10 per month if those costs were divided equally amongst all ratepayers. Further, despite much complaining, my colleague from Hannibal has failed to offer any evidence to refute the veracity of any of the representations made by the fiscal impact statements for these three rulemakings.

An increase of $10 per month for enhanced reliability is a pretty tough pill to swallow for a lot of Missouri ratepayers, especially when you consider that our state's four investor-owned utilities have filed statements with the Securities & Exchange Commission (SEC)

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[2]Compare 4 CSR 240-20.020 Residential Electric Underground Distribution Systems rescinded on August 15, 1983.

[3]See Proposed Rule 4 CSR 240-23.010(9).

[4]See generally Proposed Rule 4 CSR 240-23.010(15), (16), (17), (18) and (21).

indicating they will need more than $10 billion in additional investment over the coming decade to comply with new environmental standards and to meet existing load growth. A significant portion of these costs will be associated with new environmental regulations like the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR). Carbon regulation at the federal level could cost Missouri utilities, and ultimately ratepayers, well in excess of a billion dollars a year. Thus, any rules that would ultimately expose consumers to excessive and needless expenditures for the purpose of achieving the gold standard for reliability are in my opinion irresponsible and anti-consumer.

That brings us to the case for these ECRM rules. They are a tool for this commission to consider using in determining a rate case to ensure that the utilities actually have an opportunity to earn their allowed return on equity. They are nothing more. If applied correctly in the context of a rate case, the ECRM could actually speed the installation of new environmental technology that will improve the quality of our environmental stewardship. Otherwise, utilities will be encouraged to fight new tougher environmental restrictions, to delay installation of new environmental technology as long as possible or until the company can time its installation.

Ultimately, this rulemaking illustrates a much deeper divide between this Commissioner and my colleague from Hannibal.

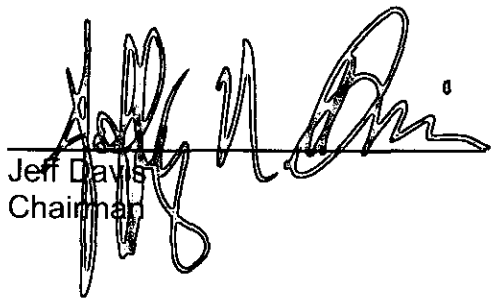
My colleague's philosophy is a simple one: let's do whatever it takes to have the most reliable system in the country. It's a noble goal. The only thing disingenuous about his position is that he has no sense of expectation about what these proposed improvements will cost and who will ultimately be asked to pay for them. He simply sidesteps the issue that utility investments to comply with his proposed rules will, in all likelihood, be recoverable in rates and that the shareholders of those utilities are entitled to the opportunity to earn a fair return on those investments. What's being attempted here amounts to nothing less than a huge backdoor tax increases on the backs of utility shareholders and eventually their ratepayers. Anyone who does not subscribe to this theory is branded anti-consumer by my colleague from Hannibal and others who share his beliefs.

I believe utility customers deserve better. I believe they deserve to be told the truth and the truth of this matter is that the ratepaying public should be told about all the costs

and benefits associated with rulemakings at the time they are being incurred.

Nothing in life is ever free. You get what you pay for and you have to pay for what you get. If you want to encourage utilities to invest money in cleaning up the environment, the best way to do that is to prescribe a method for recovering those costs. This allows investment to flow to areas where cost recovery is most rapid and certain. If used properly, this rule will benefit consumers by lowering their costs and speeding environmental recovery. So, in conclusion, politicians like my colleague don't have a monopoly on helping consumers and the practical, pragmatic course I am charting for this commission will ultimately be more beneficial to utility ratepayers than unworkable standards, a gold-plated system or anything else my colleagues from Hannibal and Moberly have offered on any of these issues.

Respectfully submitted,



Jeff Davis
Chairman

Dated at Jefferson City, Missouri,
on this 7th day of November, 2007.