BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Amendments to	)	
4 CSR 240-20.100, Electric Utility Renewable	)	Case No. EX-2014-0352
Energy Standards Requirements	)	

COMMENTS OF
THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

The Missouri Industrial Energy Consumers ("MIEC") submits these comments on the Commission's proposed amendments to rule 4 CSR 240-20.100, Electric Utility Renewable Energy Standards Requirements ("Proposed Amendments").

MIEC member companies are among the largest employers in the state of Missouri, and contribute significantly to the economic base of the state. Because the MIEC companies operate in competitive markets, they are keenly concerned about controlling all aspects of their costs. For this reason, the MIEC has actively participated in all proceedings leading to publication of the Proposed Amendments. The MIEC commends the Commission and its staff for soliciting and considering the comments of all of the stakeholders, in multiple forums, and for keeping all of the stakeholders apprised of each development of the Proposed Amendments.

As with earlier versions of this regulation, the MIEC is keenly interested in subsection (5) of the regulation since that section calculates the allowable financial impact of the renewable energy standard ("RES").

Background

Sections 393.1025 (Definitions) and 393.1030 (Renewable Energy Requirements) were the statutes adopted under Proposition C and became effective on November 4, 2008, upon the passage of Proposition C. Section 393.1030.2 provides that the Commission is to promulgate

whatever rules are necessary to enforce the renewable energy standard and, among other things, provides that "[s]uch rules shall include:"

> (1) **[a] maximum average retail rate increase of one percent 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 sources, taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation[.] (emphasis added)

As this Commission is aware, the current version of the regulation had some ambiguity that the Missouri courts addressed. In *State ex rel. Missouri Energy Development Association v. Public Service Commission*, 386 S.W.3d 165 (Mo. App. 2012), the Missouri Court of Appeals addressed a number of issues concerning section (5) of the regulation. The court was clear that the intent of section 393.1032.2(1) was "to limit the retail rate impact of the RES so that rates at any time would not exceed one percent of what they would otherwise be if there were no renewable resources included in the utility's generation portfolio." *Id.* at 386 S.W.3d 173. The court also explained that the cost of fuel and environmental compliance costs should be considered in determining the cost of the RES, but that "any attempt to double count such costs in the calculation of the retail rate impact would be unreasonable[.]" *Id*. at 386 S.W.3d 174.

Lost Billing Units Should Be Considered In Determining Rate Impact

Section (5) of the regulation calculates the anticipated difference in dollars of revenue requirement between the RES-compliant portfolio and the non-RES-compliant portfolio for the purpose of limiting the difference in rates between the two portfolios to 1%. However, the percentage difference in revenue requirement between the RES-compliant portfolio and the non-RES–compliant portfolio will equal the percentage rate impact to customers between the two portfolios only if retail kilowatthour sales are the same in both portfolios. If sales are lower in the RES-compliant portfolio (as is the case when the RES-compliant portfolio includes

qualifying on-site renewable customer generation that displaces purchases from the utility), the percentage difference in rates will be larger than the percentage difference in revenue requirements. For instance, Ameren Missouri has issued almost $90 million in solar rebates. This is for approximately 45 million watts of capacity for solar panels installed on customer premises. While those solar panels are producing power, that power displaces power that otherwise would have been sold to those customers. Because the utility, in this case Ameren Missouri, has fewer billing units over which to recover its significant cost of plant, the charge per billing unit necessarily increases. That increase should be measured and accounted for in calculation of the rate impact to customers. Unlike the one-time cost of the solar rebates, the lost billing units' impact will continue for as long as the solar panels operate, likely close to 20 years.

The MIEC proposes that if revenue requirement differences are used as the basis to limit the rate difference to 1%, the allowable percentage difference in revenue requirements will need to be reduced to less than 1% in order to limit the rate difference to 1%. In 240-20.100(5)(G), in the second sentence, after "revenue requirement for that year" add "further adjusted to recognize the effect that differences between the portfolios in retail sales volumes has on rates." While section 393.1030.2(1) does require the consideration and comparison of the RES and non-RES portfolios in determining rate impact, that paragraph does not limit the calculation to that comparison. The billing units adjustment proposed above is allowed by section 393.1030.2(1) and indeed consistent with the law as articulated by the Court of Appeals: "to limit the retail rate impact of the RES so that rates at any time would not exceed one percent of what they would otherwise be if there were no renewable resources included in the utility's generation portfolio." *Id.* at 386 S.W.3d 173.

The Language of the Regulation Should Not Double Count Fuel and Environmental Compliance Costs

As the Court of Appeals made clear, "any attempt to double count [fuel and environmental compliance] costs in the calculation of the retail rate impact would be unreasonable[.]" *Id*. at 386 S.W.3d 174. The MIEC recognizes that no party intends such double counting, yet literally that is what the regulation does. Section (5)(B) of the regulation starts with a calculation of "total retail revenue requirement incorporating an incremental non-renewable generation and purchased power portfolio." Obviously, that total includes the cost of fuel and environmental compliance, two costs not included in the "total retail revenue requirement including an incremental RES-compliant generation and purchased power portfolio." By subtracting one from the other, the impact of fuel and environmental compliance cost savings is already reflected. There thus is no need for, and it is unreasonable to have, any additional adjustment for those costs as paragraph (B) later requires:

> These comparisons will be conducted utilizing incremental revenue requirement for new renewable energy resources, less the avoided cost of fuel not purchased for non-renewable energy resources due to the addition of renewable energy resources. In addition, the projected impact on revenue requirement by non-renewable energy resources shall include the expected value of greenhouse gas emission compliance costs[.]

The MIEC suggests two alternatives to correct the regulation in this regard. All language in paragraph (B) calling for separate calculations (much of which is set out above) could be removed. Alternatively, a sentence could be added at the conclusion of such language providing: "In no event shall the calculation of rate impact double count the cost of fuel or environmental compliance cost savings."

Section (5)(A) Should Use The Specific Effective Date of September 30, 2010 For Renewable Resource Exclusion

Section (5)(A) provides that "[t]he retail rate impact shall exclude renewable energy resources owned or under contract prior to the effective date of this rule." At the time the original rule was adopted this language made sense since it was unclear what that effective date would be. Now we know that it is September 30, 2010. The regulation would be clearer and easier to comply with if the specific date is used.

Respectfully submitted,

BRYAN CAVE, LLP

/s/ Edward F. Downey
Edward F. Downey, #28866
221 Bolivar St., Ste. 101
Jefferson City, Missouri 65101
Telephone: (573) 556-6622
Facsimile: (573) 5556-6630
E-mail: efdowney@bryancave.com

Diana M. Vuylsteke, #42419
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2543
Facsimile: (314) 259-2020
E-mail: dmvuylsteke@bryancave.com

Attorneys for the Missouri Industrial Energy Consumers