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ADMINISTRATIVE RULES

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

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 AUTHORIZE FILING OF RENEWABLE ENERGY STANDARDS
RULES WITH THE SECRETARY OF STATE

I respectfully dissent with the majority of my Commission colleagues in their decision to transmit the entire rule to the Secretary of State including those portions specifically disapproved of by the Joint Committee on Administrative Rules (JCAR). I concur with Commissioner Jarrett's dissent and wish to offer a few more brief thoughts.

THE RULE ITSELF IS IMPROVED, BUT STILL NEEDS MUCH WORK:

First, the rule is improved. Had JCAR not intervened Missourians would be stuck with a standard offer contract that would enrich the solar industry at everyone else's expense and utilities would have been facing costly litigation over penalty provisions that everyone now recognizes as being unconstitutional. I am glad my colleagues came to their senses and voted to amend these provisions.

More importantly, JCAR did its job and should be lauded for stopping the geographic sourcing provisions of this regulation. These two provisions will cost tens, possibly hundreds of millions of dollars in the aggregate and those costs will ultimately be born by the ratepayers if adopted.

The rate cap language is also problematic. I heard counsel for Renew Missouri as well as my colleagues at times talk about the intent of the voters or legislative intent.

Everyone needs to get one thing straight – the majority wasn't following the intent of the voters in crafting this section. My impression and that of every disinterested person I asked is that they thought they were voting for a one percent rate cap or at worst one percent per year, not one percent over what projected rates would be otherwise.

THE LAW IS NOT SILLY PUTTY FOR AGENCIES TO MOLD AS THEY SEE FIT:

I might not be as eloquent as Commissioner Jarrett quoting John Adams, but my concerns are the same. The law is the law. It's not some guideline that we can disregard at will and read ambiguity into where there is absolutely none. It's designed to limit our actions as public officials, not to be treated like silly putty that we can mold into whatever we want it to be in order to achieve whatever particular purpose we might have at the time, no matter how noble that purpose may be. There is a simple solution: if you don't like the law, change it. We have separation of powers for a reason – to prevent one branch of government from overreaching the other two. There was a whole lot of overreaching going on in this rulemaking docket.

I AM CONCERNED THAT THE PSC MAJORITY HAS DAMAGED OUR CREDIBILITY WITH THE MISSOURI GENERAL ASSEMBLY:


Finally, I am deeply concerned that the Commission majority's initial interpretation of the statutes in submitting the rule to JCAR and its subsequent course of conduct has damaged our credibility with the Missouri General Assembly. We have to appear in front of the legislature to testify on our budget and on numerous other policy issues. We need the legislature's support and I question whether they are going to be inclined to listen to us after this debacle.

The legislature has a number of tools at its disposal when dealing with administrative agencies. It would be unfortunate, but understandable if the PSC budget gets reduced, our

rulemaking authority gets restricted or nobody listens to us on an important policy issue as a result of these events.

For all of these reasons, I respectfully dissent.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Jeff Davis', written over a horizontal line.

Jeff Davis, Commissioner

Dated at Jefferson City, Missouri
On this 6th day of July 2010.