

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of a Workshop File to Explore	)	
Legislative and Regulatory Means to Improve and	)	Case No. EW-2011-0031
Clarify Missouri's Renewable Energy Standard	)	
Law, Mo. Rev. Stat. §§ 393.1020 to 393.1030	)	

POSITION STATEMENT OF THE
MISSOURI INDUSTRIAL ENERGY CONSUMERS

For the Missouri Industrial Energy Consumers' ("MIEC") position statement in response to this Commission's Order of August 5, 2010, the MIEC respectfully states as follows:

1. The MIEC is a nonprofit corporation organized and existing under the laws of the State of Missouri, active and in good standing. MIEC member companies consist of Anheuser-Busch, Boeing, BioKyowa, Cargill, Doe Run, Enbridge, Ford, General Motors, GKN, Hussmann, JW Aluminum, Monsanto, Nestle Purina, Noranda, Precoat Metals, Procter & Gamble, St. Gobain, Solutia, and U.S. Silica.

2. The MIEC and its member organizations are acutely interested in this matter since the MIEC members consume large amounts of electricity in Missouri. As a consequence, the MIEC has: (1) actively participated in the workshops leading up to this Commission's promulgation of regulations implementing the renewable energy standard (RES) mandate; (2) actively participated in the rulemaking proceedings, both in writing and through testimony; (3) filed original and amended applications for rehearing with the Commission to challenge major flaws in the regulations as adopted; (4) actively participated in proceedings before the Joint Committee on Administrative Rules to challenge the regulations as adopted; (5) actively participated, at the direction of JCAR, in unsuccessful settlement negotiations with members of the renewable energy industry regarding the flaws in the regulations as adopted; and (6) filed a judicial challenge of the regulations as adopted. The MIEC position throughout the above

processes was and is entirely consistent with the position of other consumer advocates, including the Missouri Office of Public Counsel and the Missouri Retailers' Association. Moreover, the MIEC position was and is consistent with the positions of Missouri's investor-owned electric utilities and its Association MEDA.

3. The Commission's August 5 Order seeks to stem litigation and uncertainty and to clarify the RES. While the Order primarily seeks position statements with respect to the "geographic sourcing" issue, the Order does seek proposals generally to clarify the RES (§ 1) and seeks position statements regarding the 1 percent retail rate impact limitation (§ 4F).

4. The proper implementation of the 1 percent retail rate impact is the potentially multi-billion dollar issue to all of the stakeholders in this proceeding. That is because renewable energy sources are generally not as cost effective as existing sources of energy used for production of electricity. Therefore, the RES creates a critical tension between the mandate's renewable energy thresholds, on the one hand, and the one percent rate impact on the other. But both the Proposition C ballot title and section 393.1030.2(1) are clear on this point: between the 1 percent retail rate impact limitation and the renewable energy thresholds, the rate impact limitation controls.¹ While the stakeholders had widely differing suggestions for calculating the rate impact, all stakeholders argued for language that was clear and unambiguous. The rate impact language is, however, unclear. Additionally, by multiple uses of the word "incremental," particularly when coupled with ambiguous "averaging" language, it appears that the Regulations' rate impact formula will grossly understate the actual impact of the RES on utilities and

¹ Henry Robertson, the drafter of Proposition C's provisions, and an attorney for RES proponent Renew Missouri, testified at the public hearing on the Regulation. Significantly, his position was that Proposition C "says that rates can never increase or bills can never increase more than 1 percent over the whole lifetime of the RES, subject to some variations due to averaging." Transcript at 298.

consumers. For the reasons that follow, the current rate impact language of the RES regulation should be corrected and clarified.

5. The MIEC also submits its comments regarding the “geographic sourcing” issue. In that regard, the MIEC incorporates the analysis provided in a memorandum dated September 20, 2010, prepared by Brian Janous and Maurice Brubaker attached hereto and incorporated herein. Moreover, the MIEC has reviewed the comments submitted by MEDA on this issue and incorporate those comments herein.

The 1 Percent Rate Impact Limitation

6. The rate impact provision of the Regulations grossly miscalculates the actual rate impact to consumers. Moreover, as indicated, the rate impact language is no model of clarity. The rate impact provision, section (5), states:

(5) Retail Rate Impact.

(A) The retail rate impact, as calculated in subsection (5)(B), may not exceed one percent (1%) for prudent costs of renewable energy resources directly attributable to RES compliance. The retail rate impact shall be calculated on an **incremental** basis for each planning year that includes the addition of renewable generation directly attributable to RES compliance through procurement or development of renewable energy resources, averaged over the succeeding ten (10)-year period, and shall exclude renewable energy resources owned or under contract prior to the effective date of this rule.

(B) The RES retail rate impact shall be determined by subtracting the total retail revenue requirement incorporating an **incremental** non-renewable generation and purchased power portfolio from the total retail revenue requirement including an **incremental** RES-compliant generation and purchased power portfolio. The non-renewable generation and purchased power portfolio shall be determined by adding to the utility’s existing generation and purchased power resource portfolio additional non-renewable resources sufficient to meet the utility’s needs on a least-cost basis for the next ten (10) years. The RES-compliant portfolio shall be determined by adding to the utility’s existing generation and purchased power resource portfolio an amount of renewable resources sufficient to achieve the standard set forth in section (2) of this rule and an amount of least-cost non-renewable resources, the combination of which is sufficient to meet the utility’s needs for the next ten (10) years. These renewable

energy resource additions will utilize the most recent electric utility resource planning analysis. These comparisons will be conducted utilizing projections of the **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 requirements by non-renewable energy resources shall be increased by the expected value of greenhouse gas emissions compliance costs, assuming that such costs are made at the expected value of the cost per ton of greenhouse gas emissions allowances, cost per ton of a greenhouse gas emissions tax (e.g. a carbon tax), or the cost per ton of greenhouse gas emissions reductions for any greenhouse gas emission reduction technology that is applicable to the utility's generation portfolio, whichever is lower.

(C) Rebates made during any calendar year in accordance with section (4) of this rule shall be included in the cost of generation from renewable energy resources.

(D) For purposes of the determination in accordance with subsection (B) of this section, if the revenue requirement including the RES-compliant resource mix, averaged over the succeeding ten (10)-year period, exceeds the revenue requirement that includes the non-renewable resource mix by more than one percent (1%), the utility shall adjust downward the proportion of renewable resources so that the average annual revenue requirement differential does not exceed one percent (1%). In making this adjustment, the solar requirement shall be in accordance with subsection (2)(F) of this rule. Prudently incurred costs to comply with the RES standard, and passing this rate impact test, may be recovered in accordance with section (6) of this rule or through a rate proceeding outside or in a general rate case.

(E) Costs or benefits attributed to compliance with a federal renewable energy standard or portfolio requirement shall be considered as part of compliance with the Missouri RES if they would otherwise qualify under the Missouri RES without regard to the federal requirements.

(emphasis added).

7. Section (5)'s formula requires a "comparison on an incremental basis" or "calculate[ion] on an incremental basis." It is not clear how that important calculation is to be performed. Indeed, subsection (A) references a percentage that is to be determined under subsection (B), yet that later subsection determines a dollar figure. Subsection (B) does not specify how that dollar figure is converted to a percentage. Section (5) references a "planning

year;” implying that a rate impact determination will be made only in such a year. “Planning year” is unclear and is not defined. Section (5) uses the term “incremental RES-compliant generation and purchased power portfolio.” That phrase is undefined and its meaning is not otherwise obvious. The Commission, in its final Order of Rulemaking at page 22, stated that by removing 13 words (exclusion of the costs of “renewable energy resources previously determined not to exceed the one percent (1%) threshold”), it intended to convert the rate impact determination from an “incremental” formula to a “cumulative” formula as that “should greatly reduce the cost of compliance to the utilities and the general economic effect on consumers.” Yet, as shown in boldface in the text of Section (5) above, the word “incremental” still appears 4 times. Moreover, the 13 words that were removed from Section (5) in response to numerous objections raised in Motions for Rehearing did not even include the word “incremental.”

8. The final Order of Rulemaking, at page 22, also states that the final language of section (5) was recommended by Public Counsel, implying that Public Counsel is satisfied with the final verbiage defining the rate impact. But the Public Counsel’s Motion for Rehearing, at pages 3-4, is clear that Public Counsel does not support the final rate impact language:

Public Counsel appreciates that the Commission revised the rule to establish the “cumulative” calculation of retail rate impacts. The revisions that the Commission made to the rule definitely help in that regard, and the Commission’s response to comments in the order of rulemaking make the Commission’s intent to use the cumulative approach very clear. There is no consensus, however, as to exactly how the percentage is to be calculated under the cumulative approach. Henry Robertson, a principal drafter of Proposition C and a lawyer for Renew Missouri (which was the driving force behind Proposition C), testified at the Joint Committee on Administrative Rules that the rate cap language [of section 393.030.2(1)] means that rates will not **ever** be more than one percent higher because of the RES requirements. Public Counsel submits that that is the proper way to calculate the percentage. It became apparent over the course of the week of June 28 that certain interests will not concede that this is what the rate cap in Proposition C means, or even what the cumulative approach means. Thus despite the intent of the drafter of Proposition C, and despite the intent of the Commission as expressed in the order of Rulemaking, the lack of

clarity in the rule itself will lead to unnecessary and resource-consuming fights over how to implement the RES requirements. As shown in the attachment to the MIEC's application for rehearing filed on July 1, certain interests will calculate "averages" – even under something denominated cumulative – that [are far lower than]² the actual impact. As that chart indicates, a utility can have costs for RES compliance ... **exceed two percent every year** ... [a]nd yet the calculation of "% RENEWABLE IMPACT (Cumulative with 10-year averaging)" shows those impacts to be well **under one percent** for the first seven years and not above two percent until after year ten. (emphasis original)

9. Public Counsel's Motion for Rehearing referenced a spreadsheet prepared by the Wind Alliance and attached to the MIEC's Motion for Rehearing. That spreadsheet, copy attached, was modeled to show the impact of the RES on AmerenUE. Significantly, it shows that the projected **actual impact** of the RES on AmerenUE would be a 1.75% increase in cost by 2011, a 5.33% increase in costs by 2014, and a 10.17% increase in costs by 2018. These are increases solely from the RES and do not include cost increases that AmerenUE would incur independent of the RES. Even though costs and rates will increase by well over 5 percent by 2014, directly due to the RES mandate, the calculated rate impact under the "cumulative approach with 10-year averaging" would be less than 1 percent, meaning no roll back of the RES mandate or of the consequent rate increases. How does this occur? The answer is simple; the concept of "10 year averaging," at least as some construe the ambiguous language of the regulation, is that one determines the calculated impact by **DIVIDING THE ACTUAL IMPACT BY 10!**

10. Additionally, the language of section (5)(B) skews the calculation of rate impact in favor of allowing more RES costs to utilities and consumers by double counting fuel and environmental costs incurred under the non-renewable energy option but not incurred under the renewable energy option. This double counting results from the fact that fuel and environmental compliance cost savings are already reflected in the direct comparison of the revenue

² Public Counsel mistakenly stated "far exceed."

requirements under the two options. No separate subtraction of fuel savings from the renewable option is required and no separate addition of environmental costs for the nonrenewable option is required. The double counting of these cost savings was no doubt unintended and should be removed.

Geographic Sourcing

11. If this Commission adopts a formula that accurately reflects the true cost of the RES mandate, and correctly rolls back the mandate to limit the rate impact to consumers of the RES mandate to 1 percent, consumers should expect to pay exactly 1 percent more for their electricity from now on. That is because the 1 percent rate impact trumps the RES mandate. With the proper application of the rate impact limitation, the geographic sourcing issue becomes how much “bang” (renewable energy) consumers will get for their “buck” (the 1 percent extra they pay for their electricity). As the memoranda of MEDA and BAI clearly establish, with a geographic sourcing requirement, Missouri electric utilities will derive a smaller measure of energy from renewable energy sources, leading to less of an environmental benefit, but more Missouri renewable energy businesses will benefit. That is the key public policy consideration that this Commission must resolve. For the reasons stated in the attached memorandum, the MIEC supports the construction providing the most renewable energy and environmental benefit that can be obtained while still limiting to 1 percent the rate impact to consumers.

Proposed Legislation of Regulatory Changes

12. The MIEC does anticipate that legislation will be and should be adopted to resolve the issues presented in this matter. The MIEC has no specific proposals at this time.

13. The MIEC suggests that the Commission amend its regulation to adopt a rate impact calculation that compares the “actual preferred resource plan” of a utility to such a plan

modified to include energy obtained from renewable energy sources sufficient to meet the RES mandate. The revenue requirement under the actual and modified plans should be compared using the formula: % rate impact = (revenue requirement of modified preferred resource plan)/(revenue requirement of actual preferred resource plan) – 1. To the extent that the “% rate impact” is greater than 1%, the mandate must be rolled back so that under the formula the “% rate impact” equals 1.

Respectfully submitted,

BRYAN CAVE, LLP

By: /s/ Diana M. Vuylsteke
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

Edward F. Downey, #28866
221 Bolivar St., Suite 101
Jefferson City, MO 65101
Telephone: (573) 556-6622
Facsimile: (573) 556-6630
E-mail: efdowney@bryancav.com

Attorneys for the Missouri Industrial
Energy Consumers