BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Submission of its 2012 RES Compliance Report	)))	**File No. EO-2012-0348**

COMMENTS IN OPPOSITION TO THE REPORT AND PLAN

The following interested parties offer these comments on KCPL's RES Compliance Report for 2011, required by 4 CSR 240-20.100(7)(A), and plan for 2012 required by 4 CSR 240-20.100(7)(B).

The Interested Parties

These parties are united in their position in this case.

The following organizations were instrumental in the passage of the Proposition C ballot initiative of 2008 that enacted the Renewable Energy Standard through sponsorship, volunteer and/or financial contributions:

- Earth Island Institute, d/b/a Renew Missouri, which also participated in the RES rulemaking and commented on the 2011 utility compliance plans;
- The Sierra Club, Missouri Chapter, 7164 Manchester Rd. St. Louis, MO 63143;
- Missouri Coalition for the Environment, 6267 Delmar Blvd., Ste. 2E, St. Louis, MO 63130;
- Missouri Nuclear Weapons Education Fund, d/b/a Missourians for Safe Energy, 804-C E. Broadway, Columbia, MO 65201;

The Missouri Solar Energy Industries Association, P.O. Box 434040, St. Louis, MO 63143, also participated in the rulemaking and has an interest in the implementation of the RES.

The following renewable energy installation companies have a business interest in the

successful implementation of the RES:

- StraightUp Solar, 9100 Midland Blvd., St. Louis, MO 63114;
- The Alternative Energy Co., 2733 E. Battlefield Rd., No. 246, Springfield, MO, 65804;
- Certified Energy Solutions, 928 Arbor Dr., St. Charles, MO, 63304;
- Missouri Solar Applications LLC, P.O. Box 1727, Jefferson City, MO 65102;
- Mid America Solar, 5029 Countryside Dr., Imperial, MO 63052;
- CMO Solar LLC, 670 Southwest County Rd. VV, Centerview, MO 64019;
- Good Energy Solutions, 2105 Carolina St., Lawrence, KS 66046;
- Microgrid Energy, 14 S. Central, Ste. 200, St. Louis, MO 63105;
- Power Source Solar, 639 W. Walnut, Springfield, MO 65806;
- Butterfly Energy Works, 8787 Big Bend Blvd., St. Louis, MO 63119;
- Free Energy, 605 N. High St., Independence, MO 64050;
- Heartland Alternative Energy, 17631 Lisa Valley Ct., Chesterfield, MO 63005-4267;
- Lake Ozark Solar, P.O. Box 81, Lake Ozark, MO 65049;
- Tech Power Systems, P.O. Box 5827, Kansas City, MO 64171.

COMMENTS

Each electrical corporation must file an annual report documenting its compliance with the RES. § 393.1030.2(c); 4 CSR 240-20.100(7)(A)M. KCPL's compliance report is contrary in major respects to the meaning and intent of the Renewable Energy Standard law.

A. REC Banking.

KCPL relies on retroactive REC banking, claiming that it met the 2011 RES target with RECs from the Spearville wind farm of vintage 2008 (Report p. 7, though Attachment 1 gives the certificate vintages as 2009, 2010 and 2011). The S-REC vintages were 2010 (Report p. 7 and Attachment 1, p. 1). This is at odds with the meaning and intent of the RES.

"An unused credit [REC] may exist for up to three years from the date of its creation." § 393.1030.2, RSMo. However, the statute also provides: "Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales: (1) No less than two percent for calendar years 2011 through 2013…" § 393.1030.1, RSMo.

Therefore renewable energy must actually "constitute" the requisite portion of sales for a given calendar year. The REC banking provision allows leftover RECs to carry over to a subsequent year. It does not allow old RECs to carry forward from a time when the portfolio standard did not even exist. The standards began in 2011; therefore all RECs used for compliance must originate beginning January 1, 2011, not January 1, 2008. RECs created before 2011 could not represent energy that "constituted" a portion of sales beginning in 2011.

It also makes no sense to speak of 2008 RECs as "unused" when there was nothing in 2008 to use them on. In saying that "An unused credit may exist for up to three years from the date of its creation," the statute refers to RECs that could have been used for RES compliance but were surplus to a utility's needs in the year of their creation. The only use within the scope of the statute is use for compliance with the statute: "A credit may be used only once to comply with sections 393.1020 to 393.1030…" and, "An electric utility may not use a credit derived

from a green pricing program." (§ 393.1030.2, RSMo.) "Unused" does not refer to RECs sitting in a REC bank account (something whose existence in Missouri was not even contemplated on January 1, 2008) waiting for a RES to be enacted.

The RES grandfathers in existing renewable generating assets. It does not follow that it grandfathers the energy generated in the past. The purpose of a RES is to foster renewable energy going forward. Retroactive REC banking amounts to a "time out" — based on three years of past generation, the utilities claim a right to take three years off. Those three years happen to be the first compliance period. Retroactive REC banking effectively moves that period back in time to 2008–10, contrary to the plain numbers in the law—2011–2013.

The utilities' perverse version of REC banking is a lamentable attempt to escape the law through a loophole they have created with the flimsiest of logic.

B. Unbundled Solar RECs

KCPL claims to meet its solar obligation by purchasing unbundled RECs from a third-party broker, taken from the Western Renewable Energy Generation Information System (WREGIS). (Report at 7, Attachment A, p.1) While this is allowed by the existing RES rule, we must insist again that it is inconsistent with the RES statute itself.

The RES is meant to encourage renewable energy. This has the twin aims of protecting the public from the pollution caused by fossil-fuel generation and fostering a new industry that has before now had little presence in Missouri. The trade in RECs is secondary to these goals and is only meant to aid in effectuating the RES. S-RECs from distant generating sources serve neither of these goals. Tracking RECs is meant to ensure that the energy they represent is eligible under the statute, and eligibility includes delivery to Missouri.

The relevant portion of § 393.1030.1 reads: "The portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state. A utility may comply with the standard in whole or in part by purchasing RECs."

The first sentence concerns power, self-generated or purchased. RECs are treated in a separate sentence because they are not power; they only represent the clean attributes and environmental benefits of renewable power. The qualification "sold to Missouri consumers" still applies; repeating it would have been redundant.

Allowing out-of-state generation to be used for compliance accommodates the dormant Commerce Clause. Demonstrating that renewable power is "sold to Missouri consumers" is difficult, however, since the movement of electrons cannot be physically tracked. The statute provides three ways to show delivery of energy: generation by a Missouri electrical corporation, PPAs, and purchase of RECs. These are all just means to the fundamental end: "The portfolio requirements shall apply to all power sold to Missouri consumers…"

In construing a statute courts must not be guided by a single sentence but must look to the provisions of the whole law, its object and policy. Rose v. Falcon Communications, 6 S.W.3d 429, 431 (Mo.App. SD 1999). A phrase cannot be read in isolation; the provisions must be construed together and read in harmony with the entire act. Gash v. Lafayette County, 245 S.W.3d 229, 232 (Mo. 2008).

Related clauses must be considered together when construing a particular provision of a statute. State ex rel. Ozark Border Electric Cooperative v. PSC, 924 S.W.2d 597, 600 (Mo.App.

WD 1996). Legislative intent is ascertained not only through the words used but their context and the problem the legislation seeks to remedy. Soto v. State, 226 S.W.3d 164,166 (Mo.2007).

General provisions in a statute give way to specific ones. Younger v. Missouri Public Entity Risk Management Fund, 957 S.W.2d 332, 336 (Mo.App. WD 1996). Specific provisions prevail unless the statute as a whole clearly shows a contrary intent; they must be given effect notwithstanding that the general provision is broad enough to include the subject to which the particular provisions relate. Terminal Railroad Association v. City of Brentwood, 360 Mo. 777, 230 S.W.2d 768, 769 (1950).

In light of these principles, the "purchasing RECs" sentence, which by itself might mean RECs from anywhere, must be read together with the preceding sentence with its specific provision limiting the statute to power sold to Missouri consumers; otherwise the general swallows the particular and the intent of the law is defeated. It would be an illogical and absurd result to say that a Missouri utility could comply solely by purchasing RECs from California. That would not achieve the environmental purpose of reducing pollution in Missouri. Missouri also has a legitimate interest in developing a renewable energy industry as long as it does not unduly burden interstate commerce in doing so.

The RES does not prohibit out-of-state RECs. Nor does it mean that there can be no trade in unbundled RECs, as the utilities have argued in the past. For example, Empire District has surplus wind RECs from Kansas that it could sell unbundled to Ameren, which is short on wind RECs.

The "sold to Missouri consumers" limitation is entirely legitimate. Missouri has no concern with energy generated and delivered elsewhere. The Commerce Clause precludes

application of a state law to commerce located entirely outside state borders even if that commerce has effects within the state. Healy v. Beer Institute, 491 U.S.324, 336 (1989).

Missouri has no business using its ratepayers' money to subsidize wind farms in Texas or solar development in Arizona. As to the claim that RECs purchased on a geographically unlimited market would be cheaper, the RES anticipated the problem of cost by imposing the 1% maximum rate impact.

Conclusion

Renew Missouri asks the Commission to:

- Find that retroactive REC banking is not allowed by the RES;
- Declare that any unbundled RECs used for compliance must represent energy sold to Missouri consumers;
- Reject KCPL's report and plan and order the company to amend and refile them, or schedule a hearing;
- Open a docket to amend the RES rule to prevent abuses such as retroactive REC banking; and
- Take whatever further action the Commission deems necessary to ensure that the compliance plan conforms to the statute and rule.

Respectfully submitted,

/s/ Henry Robertson
Henry Robertson
Great Rivers Environmental Law Center
705 Olive Street, Ste. 614
St. Louis, MO 63101
(314) 231-4181
hrobertson@greatriverslaw.org
Attorney for commenters