BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Working Case to Draft a Rule to Modify Commission Rules Regarding Renewable Energy Standard Requirements and Net Metering Standards	))))	File No. EW-2014-0092

PROPOSED REVISIONS OF RENEW MISSOURI

COMES NOW Earth Island Institute d/b/a Renew Missouri ("Renew Missouri" and hereby offers these proposed revisions to the Commission's rules at 4 CSR 240-20.100 and 4 CSR 240-20.065.

Where necessary, each proposed revision is followed by a short narrative description of the reason for the change. These revisions are based on the redline revisions filed by Staff on January 31, 2014 in Case No. EW-2014-0092 following the first workshop. In addition, please refer to Renew Missouri's redline revisions document accompanying this filing.

Revisions to the Commission's Renewable Energy Standard (RES) rule, 4 CSR 240-20.100

1. *Proposed Revision*: Between the currently-published sections (1)(L) and (1)(M), Renew Missouri requests that the following definition for "renewable energy facility" be inserted:

> "(M) renewable energy facility means an electric generation facility that generates renewable energy resources pursuant to §393.1025(5), RSMo."

Rationale: Currently, the phrase "renewable energy resource" has two different usages in both the RES statute and the Commission's rule; the phrase is used to mean both renewable electricity and a renewable energy generation facility. This revision would make a clear distinction between a renewable energy facility and renewable electricity. Along with this new definition, "renewable energy facility" should replace "renewable energy resource" in the several

instances throughout the Commission's rule where the "facility" meaning is actually intended. In addition, this insertion brings the Commission's rule in harmony with 10 CSR 140-8.010, which makes a similar distinction between facilities and electricity.

2. *Proposed Revision*: In the current section (1)(M) regarding the definition of "renewable energy resource," Renew Missouri requests that the definition be changed to "renewable electricity," and read as follows:

"(N) Renewable electricity means electric energy produced from the following: …"

Rationale: See the above comment. The phrase "renewable energy resource" should either be replaced with the above definition or clarified to refer to electricity only (as opposed to a facility). It is worth noting that the RES statute clearly defines "renewable energy resource" as "electric energy." §393.1025(5), RSMo.

3. *Proposed Revision*: In current subsection (1)(M)8. regarding hydropower, Renew Missouri requests that the definition read as follows:

> "8. Hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has an aggregate generator nameplate capacity of ten (10) megawatts or less per facility;"

Rationale: The clear intent of the RES statute at §393.1025(5), RSMo is to limit qualifying hydropower resources to small hydropower facilities under 10 MW rather than the larger, run-of-river type of hydropower facilities. The statute defines hydropower in a way that clearly applies to facilities rather than individual generators within a hydropower facility. The law's prohibition against pumped storage is not a generator-specific restriction, but rather a restriction on the type of facility that can comply. In addition, the law's prohibition against a "new diversion or impoundment of water" is clearly intended to protect against some of the detrimental environmental effects posed by large hydropower facilities. Allowing century-old

hydropower facilities like Keokuk to count toward compliance would severely frustrate meaningful development of new renewable energy as intended by the RES. As a consequence, the state's largest utility will build virtually no new renewable generation whatsoever until 2018, ten years after the passage of Prop C.

Renew Missouri has previously litigated this issue before the Commission in Complaint Case No. EC-2013-0377, et al. In that case, Renew Missouri and its expert explained in exhaustive detail both the meaning of "nameplate rating" in the hydropower industry and the undeniable purpose of the Missouri RES law with respect to hydropower. Now Renew Missouri formally requests that the Commission's rule be revised to reflect the clear intent of the RES statute.

In addition, a formal request has been submitted to the Division of Energy asking that the agency revise its renewable energy certification rule (10 CSR 140-8.010) in a similar manner. In Case No. EO-2012-0351, the Division of Energy (then part of DNR) stated to the Commission that it believed the first year of compliance under the RES was "not creating significant additional renewable energy development," which the agency said was "largely due to the fact that utilities are counting pre-existing hydropower…" See Comments of MDNR, p. 1, Case No. EO-2013-0351. The agency then "recommend[ed] additional examination to clarify how to apply the standard to hydropower…" Id. Because of some confusion over the recent move of the Division of Energy from DNR to DED, we submitted our request for a revision to 10 CSR 140-8.010 to all three offices involved.

Furthermore, such revision would have little adverse impact on any parties. Revising the hydropower definition will have little immediate impact on utilities' costs or compliance strategies. However, such revision will ensure that Missouri is accurately measuring the amount

of RES-compliant renewable energy in the way the statute intended. It is Renew Missouri's hope that the Commission and the Division of Energy will finally address this issue by revising both rules to be consistent with the letter and intent of the RES law.

4. *Proposed Revision*: In section (2), Renew Missouri requests that the phrase "RECs and SRECs associated with" be deleted from the first sentence of section (2), such that the sentence reads:

> "(2) Requirements. Pursuant to the provisions of this rule and sections 393.1025 and 393.1030, RSMo., all electric utilities must generate or purchase [~~RECs and SRECs associated with~~] electricity from renewable energy <u>facilities</u> in sufficient quantity to meet both the RES portfolio requirements and RES solar energy requirements respectively on a calendar year basis.

Rationale: The RES statute at §393.1030.1, RSMo requires the generation or purchase of *electricity*, not the generation or purchase of RECs or SRECs. In fact, RECs are merely the compliance mechanism which the law envisions: "a utility may comply in whole or in part using RECs." §393.1030.1, RSMo. This central requirement of the Commission's rule must be made legally consistent with the statute.

In addition, the phrase "renewable energy resources" should be replaced with "renewable energy facilities," as the rule is clearly making reference to facilities in this context.

5. *Proposed Revision*: In section (2), Renew Missouri requests that the last sentence be entirely deleted.

Rationale: Excluding the last sentence of section (2), other provisions of the rule clarify that RECs from otherwise economical investments in renewable generation can be retired for compliance in the same way as all other RECs for three years after their creation. The last sentence of section (2) is duplicative and serves no purpose.

6. *Proposed Revision*: In section (2)(A), currently marked *Reserved**, Renew Missouri requests that the following provision be inserted:

> "(A) Renewable electricity or RECs associated with renewable electricity are eligible to be counted towards the RES requirements only if the renewable electricity is sold to Missouri electric energy retail customers."

Rationale: The above language clarifies that compliance with the RES requires that the renewable electricity be sold to Missouri customers. The RES statute is quite clear: the RES portfolio requirements apply to "electricity" constituting certain "portions of each electric utility's sales." §393.1030.1. This revision is well within the Commission's capability, as it is specifically required by the RES statute. The above provision is necessary to ensure that utilities do not waste ratepayer money on RECs that provide absolutely no energy or other benefits to Missouri ratepayers. As Missourians, we have no interest in the "clean energy attributes" of renewable credits when the energy associated with those credits never makes it to Missouri and thus provides no benefits to Missourians.

Renew Missouri and other parties have litigated this issue in Complaint Case No. EC-2013-0377, et al. The events giving rise to this issue stretch back to the July 2010 decision of the Joint Committee on Administrative Rules (JCAR) to suggest deletion of those portions of the Commission's Final Order of Rulemaking that required actual delivery of electricity to Missouri. In the absence of those provisions, utilities have attempted compliance by retiring purchased RECs that have no connection to Missouri. While the Commission has not yet found utilities in non-compliance and clarify its rule in the context of Case EC-2013-0377, the Commission is now presented with an opportunity to rectify this defect through rulemaking.

Furthermore, such revision would have little adverse impact on any parties. Inserting the above provision into subsection (2)(A) will have little immediate impact on utilities' costs or

compliance strategies. However, the above provision will ensure that Missouri utilities will stop wasting ratepayer money on RECs that provide no energy or benefits to Missouri ratepayers.

7. *Proposed Revision*: For section (2)(B), Renew Missouri requests that the section read as follows:

> "(B) For purposes of compliance with the RES portfolio requirements:
> 1. If the renewable energy facility is located in Missouri and the electricity is sold to Missouri customers, each MWh generated by the renewable energy resource shall count as 1.25 RECs or SRECs.
> 2. If the renewable energy facility is located outside Missouri, the amount of RECs or SRECs allowed for compliance is the amount of megawatt-hours generated by the renewable energy facility that are sold to Missouri electric energy retail customers. For the purposes of subsections (A) and (B) of this section, Missouri electric energy retail customers shall include retail customers of regulated Missouri utilities as well as customers of Missouri municipal utilities and Missouri rural electric cooperatives.
> 3. RECs created by generation from customer-generator facilities and acquired by or otherwise transferred to the Missouri electric utility shall qualify for RES compliance if the customer-generator is a Missouri electric energy retail customer, regardless of the amount of energy the customer-generator provides to the associated retail electric provider through net metering in accordance with 4 CSR 240-20.065, Net Metering. RECs are created by the operation of the customer-generator facility, even if a significant amount or the total amount of electrical energy is consumed on-site at the location of the customer-generator.

Rationale: Renew Missouri believes the above provisions simplify an otherwise confusing subsection of the Commission's rule. In the above, subsection (B) simply enumerates three different methods of compliance with the RES portfolio requirements: 1) RECs from a facility within Missouri and energy is sold to Missouri customers; 2) RECs from a facility outside of Missouri and energy is sold to Missouri customers; and 3) RECs from customer-generators and acquired by the utility. Subsection (2)(B)2 of the above proposed revision also serves to clarify the requirement that utilities demonstrate that the renewable electricity for which they are claiming compliance has been sold to Missouri customers.

8. *Proposed Revision*: For subsection (2)(E), Renew Missouri request that the paragraph remain as the original language prior to this workshop. In particular, Renew Missouri

opposes any attempt to add phrases such as "renewable mandates required by law such as" or other phrases intended to include the costs of other laws within the calculation of the 1% retail rate impact for the RES.

Rationale: There is no obvious problem with subsection (2)(E) that requires revisions to address. Furthermore, costs associated with laws or "mandates" other than Missouri's RES should not be considered as part of the section (5) calculation.

9. In subsection (3)(B), Renew Missouri requests that the second sentence be revised to read:

> "Electric utilities may not use RECs and SRECS acquired in connection with a green pricing program to comply with this rule."

Rationale: RECs are not "retired" under a green pricing program in the same way as a renewable portfolio standard. Renew Missouri believes it best to use different language.

10. *Proposed Revision*: In subsection (3)(C), Renew Missouri requests that the phrase "on or after August 28, 2013" be added to the language suggested by Ameren at the January 30, 2014, such that the first sentence reads:

> "If a customer generator receives a solar rebate on or after August 28, 2013, the customer-generator transfers to the electric utility all right, title and interest…"

Rationale: Renew Missouri would like the effective date of HB142 reflected in the Commission's rule to clarify that the provision does not apply to customers receiving a solar rebate prior to that time.

11. *Proposed Revision*: In subsection (3)(G), Renew Missouri request that the phrase "renewable energy resource" be revised to "renewable energy facility."

Rationale: For the reasons stated above, and because "renewable energy resource" is clearly used here to refer to a physical generator rather than electricity, Renew Missouri believes the term "renewable energy facility" should be used.

12. *Proposed Revision*: In subsection (3)(H), Renew Missouri requests that the sentence be revised as follows:

> "RECs that represent electricity generated from a facility that subsequently fails to meet the requirements of a renewable energy facility are valid if they were created before the date on which the facility was decertified."

Rationale: "Renewable energy resource" is revised to "renewable energy facility" for the reasons stated above.

13. *Proposed Revision*: In subsection (3)(J), Renew Missouri requests that the phrase "except that" be inserted to combine the second and third sentences of subsection (3)(J).

14. *Proposed Revision*: In place of subsections (4)(H), (4)(I) and (4)(J), Renew Missouri suggests the following language be inserted:

> " (H) Standard Offer Contracts
> 1. At the time of the rebate payment, the electric utility shall offer a contract for the purchase of S-RECs created by the customer's installed solar electric system unless exempt from offering the contract as set out in paragraph (4)(H)7.
> 2. The contract shall include a one (1)-time lump sum payment, or annual payments as described below, for a ten (10)-year fixed price for the associated S-RECs.
> 3. The customer is not required to sell any or all S-RECs to the electric utility.
> 4. The sale of any S-RECs created by the installed solar electric system shall not be included as a requirement of the electric utility's interconnection agreement.
> 5. If the customer chooses to sell S-RECs created by the installed solar electric system to the electric utility, the customer shall not be allowed to sell to any other party or otherwise take credit for the S-RECs sold to the utility during the contract term.
> 6. The electric utility shall annually file a tariff revision providing the purchase price for an S-REC for the next calendar year and an amount for SRECs to be produced over the next ten (10) year period based on market rates for S-RECs at the time the tariff is filed. The filing shall be made no later than November 1st each year for the following compliance year. Workpapers documenting the purchase prices shall be submitted with the tariff filing.

A. For solar electric systems with a nameplate capacity of three (3) kW or less, the standard offer contract shall provide for the purchase of a calculated amount of S-RECs to be produced over a ten (10) year period through a one-time lump sum standard offer payment. The energy that shall be generated by a solar electric system with a nameplate capacity of three (3) kW or less will be estimated using generally accepted analytical tools.

B. For solar electric systems with a nameplate capacity between three (3) and ten (10) kW, the standard offer contract shall provide for the purchase of the S-RECs either through a one-time lump sum standard offer payment or annual payments at the customer's discretion.

C. For solar electric systems with a nameplate capacity greater than ten (10) kW, the standard offer contract shall provide for the purchase of the S-RECs through annual payments or through a one-time lump sum payment the terms of which shall be negotiated by the electric utility and the customer.

D. The unit price of S-RECs produced by solar electric systems with a nameplate capacity greater than twenty five (25) kW, will be negotiated by the customer and the electric utility and will be consistent with market prices.

E. No S-RECs can be purchased from an affiliate of the electric utility.

7. Any electric utility which has acquired a sufficient number of S-RECs for the current and subsequent calendar year shall not be required to offer a Standard Offer Contract at the time of the rebate payment. If an electric utility utilizes this exemption, it shall be reported in accordance with subsection (7)(A) of this rule.\

(I) Electric utilities that have purchased S-RECs under a one (1)-time lump sum payment in accordance with subsection (H) of this section may continue to account for purchased S-RECs even if the owner of the solar electric system ceases to operate the system or the system is decertified as a renewable energy resource. S-RECs originated under this subsection shall only be utilized by the original purchasing utility for compliance with this rule. S-RECs originated under this subsection shall not be sold or traded.

(J) Electric utilities that have purchased S-RECs under a one (1)-time lump sum payment shall utilize the associated S-RECs in equal annual amounts over the lifetime of the purchase agreement."

Rationale: The proposed language is from the Commission's originally proposed rule from June 2010 prior to being submitted to JCAR. Rather than allowing utilities the option of offering customers a standard-offer contract, the proposed language would require utilities to offer to purchase customers' SRECs at a price arrived at by using the specified methodology and after input from a broad group of stakeholders.

Renew Missouri urges the Commission to reconsider this original Standard Offer Contract language. Provisions of HB 142 now require customer-generators who have received solar rebates to transfer the ownership of SRECs to the utility. But due to the possibility of solar rebates not being offered in the future, it is reasonable to anticipate a large amount of net-metered solar coming on-line without the aid of rebates. If so, a sensible framework should be in place whereby utilities must offer to purchase these customers' SRECs and wherein prices are set through a process that reflects the actual value of Missouri SRECs.

15. *Proposed Revision*: In subsection (4)(N), Renew Missouri requests that the following provision be added between subsections (4)(N)1 and (4)(N)2:

> "The solar rebate amount actually paid on a monthly basis, posted within 15 days of the end of the month at issue."

Rationale: Renew Missouri appreciates the recent efforts of Ameren Missouri and KCP&L to keep stakeholders and the public informed about the amount of solar rebates paid each month. Renew Missouri believes this practice should be formalized by rule for all utilities.

16. *Proposed Revision*: In subsection (5)(A), Renew Missouri requests that the second sentence include the phrase that begins with "on an incremental basis…" – which Staff has suggested deleting – such that the second sentence reads as follows:

> "The retail rate impact shall be calculated annually <u>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 electricity</u>."

Rationale: The cost impact of the RES is something that must be calculated on a periodic or "incremental" basis. This is because the nature of the RES makes various things happen on a periodic or incremental basis (as opposed to an ongoing or one-time basis). E.g.: planning periods; annual reports and plans; changes in the portfolio stairsteps; the annual basis of the 1% retail rate impact, etc. It is essential that utilities complete the section (5) calculation each

planning year. Given the prominence that the "incremental" concept has had in previous litigation, Renew Missouri believes it best to maintain the above language in the Commission's rule. Furthermore, no party has articulated what benefit or purpose this deletion would serve.

17. *Proposed Revision*: In subsection (5)(B), Renew Missouri requests that the word "incremental" be preserved in the two instances where it has been suggested for deletion.

Rationale: See above.

18. *Proposed Revision*: In subsection (5)(B), Renew Missouri request that all instances of the phrase "renewable energy resource" or "renewable resource" be replaced with the phrase "renewable electricity" (See redline document for specific suggested changes).

Rationale: As discussed above, "renewable energy resource" is currently used in two difference senses in the Commission's rule; it used to mean both electricity and generation facility. Renew Missouri believes it is best to remove this ambiguity by using clearer terms. If the term "renewable electricity is not used, Renew Missouri encourages the Commission to use other terms to clarify that subsection (5)(B) is referring to electricity.

19. *Proposed Revision*: In subsection (5)(B), Renew Missouri requests that the following sentence be included in place of the fifth sentence:

> "These comparisons will be conducted utilizing the actual and projected incremental revenue requirement for new renewable electricity, <u>less costs avoided due to the addition of renewable resources over the full life of those resources, including avoided cost of fuel not purchased; avoided financing and administrative costs; the avoided cost of transmission and distribution infrastructure, operations, and repairs; avoided fuel price volatility risk; and other known and measurable avoided costs due to the addition of renewable energy resources in lieu of continuing to generate or purchase electricity from entirely non-renewable sources</u>."

Rationale: In order for the RES-compliant portfolio and the non-renewable portfolio to be accurately compared, utilities must take into account ALL avoided costs that result from the generation of renewable electricity attributable to the RES. While the Commission's existing rule

specifically mentions avoided fuel costs, it does not mention various other savings that the utility experiences as a result of increasing its renewable generation. Renew Missouri does not support any language that would result in a "double counting" of these avoided costs. However, Renew Missouri does believe it is essential for utilities to measure and disclose all of these avoided costs and savings resulting from renewable investments when conducting their annual RES compliance planning and section (5) calculations.

20. *Proposed Revision*: In subsection (5)(D), Renew Missouri requests that the second sentence read as follows:

> "When adjusting downward its proportion of renewable electricity or RECs so as to not exceed the utility's 1% retail rate impact limit, the utility shall give first priority to reducing or eliminating the amount of RECs not associated with electricity sold to Missouri customers."

Rationale: The above language is intended to prevent RECs unassociated with Missouri energy (so called "unbundled RECs) from being used for compliance when a utility has already reached its 1% limit. As stated previously, there is no value in spending ratepayer money on RECs that bring zero energy or benefits to Missouri.

This provision is not necessary if the overall problem of unassociated RECs is solved (see paragraphs 6 and 7 above), but so far the Commission has failed to address this problem. Any money being spent on renewable energy should be of direct benefit to Missouri ratepayers, especially when a utility is already reaching its 1% retail rate limit.

At the January 30, 2014 workshop, a concern was raised about how to word the provision so as to ensure the delivery of energy to Missouri. The suggestion was made that utilities could demonstrate that the generation resource was located in the grid operated by the RTO that delivers electricity to the utilities' customers. Renew Missouri does not support such a provision, as it presents many of the same issues we currently have (MISO and SPP cover many states in

which power would not be guaranteed to be delivered to Missouri). Rather, Renew Missouri supports a provision that simply requires that the electricity associated with the RECs be *sold to Missouri customers, as required by statute.*

Revisions to the Commission's Net-Metering Rule at 4 CSR 240-20.065

21. *Proposed Revision*: In subsection (1)(A) regarding the definition of "Avoided fuel cost," Renew Missouri requests that the phrase "the fuel component of" be inserted, so that the provision reads:

> "(A) Avoided fuel cost means the fuel component of avoided costs described in 4 CSR240-20.060 used to calculate the utility's cogeneration rate…"

Rationale: Insertion this phrase clarifies that avoided fuel costs are only a single component of the overall avoided costs due to the utility's investment in renewable energy.

WHEREFORE Renew Missouri submits these comments and requests that the Commission consider them in revising its rules at 4 CSR 240-20.100 and 4 CSR 240-20.065.

Submitted by,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this filing was sent by email to all parties of record in this case on February 14, 2014.

/s/ Andrew J. Linhares
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