

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

In the Matter of a Workshop File to Explore)
Legislative and Regulatory Means to Improve)
And Clarify Missouri's Renewable Energy) **File No. EW-2011-0031**
Standard Law, Mo. Rev. Stat. §§ 393.1010)
to 393.1030.)

COMMENTS OF THE STAFF

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), through the Staff Counsel's Office, and offers the following comments in response to the August 5, 2010 Order Opening A Workshop File To Explore Legislative And Regulatory Means To Improve And Clarify Missouri's Renewable Energy Standard Law, Mo. Rev. Stat. §§393.1010 to 393.1030:

Geographic Sourcing: Questions 4.A - 4.D

The Staff suggested in its rulemaking comments to the Commission in Case No. EX-2010-0169 that the Commission should remove any restrictions on the source of "renewable energy credits" (RECs)¹ utilized for compliance with its proposed rule. The Staff noted that Section 393.1030.1 states that "[t]he 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. Each kilowatt-hour of eligible energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance." The Staff further stated that the statute does not place any geographic restrictions on the source of the RECs nor does it require the RECs to be specifically associated with energy sold to Missouri customers. The first of these sentences specifically references energy in or outside the state to be utilized for serving Missouri customers. This is an acknowledgement of the overall retail sales by the utility and the sources of that energy, not just renewable energy. The second sentence states specifically that RECS may be utilized for compliance. No mention is made of RECs associated with power sold to Missouri customers. The final sentence explicitly acknowledges that there is a 1.25 multiplier for in-state generation. If the intent of the statute was to limit energy or RECs to the geographic boundaries of Missouri, this last sentence would not be necessary and in fact serves to reduce the overall portfolio requirements since all energy/RECs would receive the 1.25 credit.

During the rulemaking hearing on the RES proposed rule (April 6, 2010), Staff provided additional information regarding its position. The range of options for geographic sourcing was

¹ A tradeable certificate of proof that one megawatt-hour of electricity has been generated from renewable energy sources.

within Missouri to anywhere on planet earth. The Staff's witness Michael Taylor indicated that something other than the envelope of this range might be more appropriate. Either the contiguous forty eight (48) states or the North American continent might be more realistic for sourcing RECs. These choices would provide more integrity in the REC tracking system. Section 393.1030.2 provides in part that "[t]he commission . . . shall select a program for tracking and verifying the trading of renewable energy credits."

The estimated amount of renewable megawatt-hours required for compliance with the overall RES requirement for 2011 for the state is approximately 1,200,000. Based on review of the FERC Form 1 data filed by the investor-owned electric utilities for calendar year 2009, approximately 2,400,000 megawatt-hours of potentially certifiable renewable energy was purchased or generated by these investor-owned electric utilities. Approximately 3% (76,000 megawatt-hours) of that amount was generated within the Missouri boundaries.

Max. One Percent Retail Rate Increase (1% Retail Rate Impact "Cap"): Question 4.F²

The 1% retail rate impact "cap" is a feature of Proposition C (Renewable Energy Standard Law, Mo. Rev. Stat. §§393.1020 to 393.1030) that limits the amount of expenditures a utility must undertake to meet the RES requirements if incurring such costs would cause the utility's retail rates to increase by more than 1%. The Commission's rule provides for the 1% retail rate impact "cap" to be calculated according to the so-called "cumulative" approach, as averaged over a ten-year period. Adoption of the cumulative approach means that rates charged to retail customers reflecting the costs to comply with the RES requirements cannot, on average, be more than 1% higher than the rates that would be charged retail customers under the assumption that no renewable energy resources were being used by utilities.

The Staff believes it is likely that the effect of the 1% retail rate impact "cap" will possibly be to limit the required expenditures made by some Missouri investor-owned electric utilities to comply with the RES, prior to full attainment of the RES requirements set forth for the specified calendar years in Proposition C.

In addition, the Staff believes it is reasonable to assume that inclusion of geographic sourcing provisions in the RES rulemaking will cause the total cost by investor-owned electric utilities to comply with the RES requirements to be higher than the cost that would be applicable if no geographic sourcing restrictions were included.

The relationship between the 1% retail rate impact "cap" and the geographic sourcing scenarios set forth by the Commission is that, the higher the costs to comply with RES requirements, the faster the 1% retail rate impact "cap" will be reached, all other things being equal. To the extent the Commission rules have geographic sourcing provisions, and those provisions, in fact, result in an increase in the cost of RES compliance above the level associated with alternative non-geographic sourcing provisions or possibly even less restrictive geographic sourcing provisions, then the 1% retail rate impact "cap" will apply to the utilities at a lower level of compliance with the RES, i.e., the less costly it is for the investor-owned electric utilities

² Section 393.1045 Laws 2008, Senate Bill Nos. 1181, 1100, 1262 & 1263, §A. should not be forgotten, which non-Proposition C statutory section provides a rate cap: maximum average 1% increase in retail rates in any year.

to attain the RES, the less the possibility that an investor-owned electric utility may not be able to attain the RES because of the 1% retail rate impact “cap.”

To summarize, given the existence of the 1% retail rate impact “cap,” there may well be a trade-off between the degree of inclusion of geographic sourcing limitations in the rule and the ability of Missouri electric investor-owned utilities to fully attain the RES requirements in the timeframes set forth in Proposition C.

Legal Concerns: Question 4.E

As the Commission is aware, the legal issue with the geographic sourcing question that has been raised throughout the RES proceeding is the dormant Commerce Clause of the U.S. Constitution, Article I, Section 8, Clause 3.

The Staff would note that a number of entities, Missouri Energy Development Association (MEDA), Union Electric Company d/b/a AmerenUE, The Empire District Electric Company, Missouri Industrial Energy Consumers (MIEC), and Missouri Retailers Association (MRA) have sought judicial review in Cole County Circuit Court of the Commission’s RES rulemaking.

Further Action By The Staff

The Commission has not indicated a schedule for next steps. Therefore, the Staff proposes for the Commission’s consideration that the Staff quickly review the filings made on October 1, 2010 and the Staff file with the Commission during the week of October 4, 2010, a date by which the Staff would file comments on the Comments filed on October 1, 2010. Other entities might want to propose during the week of October 4, 2010 next steps if they have not already done so in their filings on October 1, 2010. Of course, the Commission may already have well in mind the next steps it wants to take and a schedule for those next steps.

Respectfully submitted,
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