

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

In the Matter of Proposed Rulemaking	)	
Regarding Electric Utility Renewable	)	<u>Case No. EW-2011-0031</u>
Energy Standard Requirements.	)	

**PUBLIC COUNSEL’S STATEMENT OF POSITION
AND REQUEST FOR LEAVE TO LATE-FILE**

COMES NOW the Office of the Public Counsel for its Statement of Position and Request for Leave to Late-file states as follows:

In its 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. §§ 393.1020 to 393.1031,” the Commission recognizes that issues with respect to Proposition C and the Commission’s implementing rules persist despite the Commission’s Order of Rulemaking issued on July 7, 2010. The Commission’s August 5 order seeks input from interested entities on several of these issues, primarily geographic source restrictions and bundling of RECs with energy, and Public Counsel provides the following responses to the Commission’s questions.

A. What are the legal, economic and public policy consequences and implications of requiring electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located in Missouri?

The legal ramifications of the current statutory language regarding the issue of "geographic source restrictions"¹ (a term and a concept that is conspicuously absent from the statute) are the easiest part of the questions to answer. The statute makes no mention of a restriction on the source of renewable energy that works toward meeting the targets. Moreover, it clearly contemplates that some renewable energy may come from outside of Missouri, in that it establishes an adder for Missouri-sourced energy. The drafters who wrote the ballot initiative and the voters who voted for it apparently agreed that the .25 adder is sufficient to establish a preference for Missouri-sourced energy and to give Missouri-sourced energy a competitive advantage. Nothing in the law indicates an intention on the part of the drafters or the voters to entirely subsume this preference and advantage within an absolute restriction. In terms of drafting, it would have been much simpler to include a Missouri-only restriction than to create a quantitative preference for Missouri-sourced energy. The fact that the drafters chose (and the voters approved) a preference scheme rather than a restriction scheme speaks for itself.

Because the scope of this case includes the exploration of legislative options and public policy considerations, the examination of geographic source restrictions does not stop with an analysis of the current law. Some participants will surely suggest that the law should be changed to require the geographic source restrictions that are currently missing, and such a change would certainly have public policy implications. Because similar policy implications arise with respect to Questions B and C as well, they will be discussed in response to Question F.

¹ The Commission uses the term "geographic sourcing" in its order. All renewable energy has a geographic source; the issue is whether the source should be used to restrict the use of some energy or some RECS as a resource to meet the RES. Thus "geographic source restriction" is a more apt term.

B. What are the legal, economic and public policy consequences and implications of allowing electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located outside of Missouri, only if the energy for compliance with the RES is sold to Missouri customers?

The question of “bundling” RECs with energy is similar to question of geographical source restrictions. There is nothing in Proposition C that – even by implication – would allow the Commission to require that RECs be bundled with energy sold in Missouri. As Public Counsel pointed out in filings in Case No. EX-2010-0169, the whole point of a REC is that it embodies the renewable attributes of the generation, and allows the renewable attributes to be freely traded independently of the energy itself. Requiring the RECs to be re-bundled with the energy that they have been divorced from completely negates the concept of using RECs in the first place. Moreover, restricting the pool of RECs that qualify in meeting the RES will necessarily mean that some low-cost RECs will not be able to be used, thus raising the cost of compliance.

C. What are the legal, economic and public policy consequences and implications of allowing electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located outside of Missouri, only if the energy for compliance with the RES is sold to retail customers located within the Regional Transmission Organization or Independent Transmission System Operator in which Missouri is located?

The scenario described in this question theoretically may increase the size of the pool of qualifying RECs compared to the scenario described in Question B, which should lower the cost of compliance compared to the scenario described in Question B. But there is nothing in

Proposition C that refers to any bundling of RECs with energy, even if the sources of energy may be within a region rather than just within the State of Missouri.

D. What are the legal, economic and public policy consequences and implications of allowing electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located anywhere outside of Missouri irrespective of the location of the delivery of the energy.

This is the only scenario posed that complies with Proposition C, which simply states that “A utility may comply with the standard in whole or in part by purchasing RECs.” The consequence of adopting such a scenario is that some – and perhaps a great deal – of the required compliance with the RES will be made with RECs purchased on the market, and some – and perhaps many – of those RECs will derive from energy generated outside of Missouri. As discussed in response to Question F, there is a positive correlation between restrictions on usable RECs and the costs of compliance with Proposition C. Under this scenario, Missourians will have the benefit of the most renewable energy generation, although it would not all be generated in Missouri, or even in the Midwest.

E. Which of the above potential scenarios (as set forth in A, B, C, or D above) are legally permissible and/or supportable under the current statute?

Only the scenario posed in Question D is permissible under the current statute. As discussed above, Proposition C does not authorize the PSC to impose restrictions on the use of RECs based on the geographical source of the energy from which the REC has been divorced, nor does it authorize the PSC to impose restrictions on the use of RECs based on the end-use

point of the energy from which the REC has been divorced. The scenarios in Questions A-C, which all require re-associating RECs with energy to varying degrees, impose restrictions not authorized by the statute. Moreover, they attempt to alter and add to the definition and function of RECs.

F. In answering the questions set forth in A-D, stakeholders should also discuss the operation of the 1% retail rate impact under each of the scenarios.

In general, the more restrictions with respect to geographic source and bundling, the higher the compliance costs will be. So a scenario that incorporates the restrictions in Questions A and B would be higher than one that includes only A or B. Similarly, the scenario in Question C would be less costly than Scenario B, but more costly than the one in Question D.

As the cost of compliance increases, it is more likely that the 1% retail rate impact cap will go into operation. As mentioned above, this creates a public policy balancing question: is it better to have less renewable energy generated (but all of it generated in Missouri) or is it better to have more renewable energy generated (but some of it generated outside of Missouri)? Many of the benefits of renewable energy (less reliance on imported fossil fuels, fewer environmental impacts from the extraction of fossil fuels, fewer emissions from the burning of fossil fuels, etc.) are national or even global rather than Missouri-specific, so Missourians get the benefit of reduced emissions whether the renewable energy is generated in Missouri or Timbuktu. The countervailing argument is that renewable energy generated in Missouri creates Missouri jobs and Missouri taxes. While arguments can be made for either side, Public Counsel suggests that, since the voters of Missouri just approved a RES law with neither geographical source

restrictions nor bundling requirements, the public policy of the state should require neither geographical source restrictions nor bundling requirements.

Request to Late-File

The undersigned was unexpectedly required to be out of town on Friday, October 1, and so could not finalize this response for filing on the due date. Neither any of the participants nor the Commission will be prejudiced by the one-business-day delay in filing. The delay was not made to seek advantage over the other participants, and good cause exists to allow a brief extension.

WHEREFORE, Public Counsel respectfully submits these responses to the questions posed in the Commission's August 5 order, and requests leave to late file.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed this 4th day of October 2010 to:

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