Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.1030, RSMo Supp. 2009 and sections 386.040 and 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-3.156 Electric Utility Renewable Energy Standard Filing Requirements **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 16, 2010 (35 MoReg 365). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held on April 6, 2010, in conjunction with the hearing for the proposed rule in 4 CSR 240-20.100. Numerous comments relating to the other rule were received, but no comments were received relating specifically to this rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.1030, RSMo Supp. 2009, and sections 386.040 and 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-20.100 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 16, 2010 (35 MoReg 365–389). Those sections and subsections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held April 6, 2010, and the public comment period ended April 5, 2010. The commission received two hundred sixty-seven (267) written comments. At the public hearing, twenty-nine (29) witnesses testified. All of the comments were generally in support of a rule to implement the renewable energy standards, but many had suggestions for specific changes to the proposed rule.

COMMENT #1: The commission received two hundred sixty-seven (267) written comments and twenty-nine (29) people testified at the hearing. Comments from three (3) citizens in northwest Missouri indicated that the wind farms in that area have had a positive impact on the citizens in that area and on the state and local economies. Two hundred thirty-six (236) written comments were received from members of the Union of Concerned Scientists (UCS). BP Wind Energy NABP NA, Inc., enXco, Inc., Gamesa Energy USA, Iberdrola Renewables, Inc., Invenergy LLC, NextEra Energy Resources LLC, TradeWind Energy LLC, and Wind Capital Group, LLC, (collectively referred to as the "Wind Alliance") filed joint comments and testified at the hearing through their counsel, Khristine A. Heisinger. Many of those written comments and most of the testimony stated general support for the rule and stated that the rule would not only promote renewable energy generation in Missouri, but would also aid economic development by creating jobs in the renewable energy industry. Many of the comments, as addressed below, requested changes to specific provisions of the rule.
RESPONSE: The commission appreciates the overwhelming participation from citizens, utilities, public entities, commission staff, and other interested parties in the development of this rule. The commission began this rulemaking process with workshops in a related docket, EW-2009-0324, during the course of which, various stakeholders participated in helping to formulate the language of this rule. Of course, not all positions were accepted for the proposed rule and the comments reflect the various stakeholder positions. No changes resulted from the comments generally in support of the rule. The specific comments are addressed below.

COMMENT #2: General changes to section (1): The staff of the commission's written comments stated that subsections (1)(A), (1)(B), and (1)(C) are not in alphabetical order. Staff also recommended that language in paragraph (1)(D)4. be deleted because it replicates the language in the net metering rule, 4 CSR 240-20.065(1)(C)6., which governs the technical aspects of interconnection with an electric utility. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, KCPL) commented that the definition of customer-generator should include a mechanism for disabling the generating unit. Jill Tietjen also commented about a typographical error in the title of a publication cited.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comments of KCPL and staff. The commission will make the suggested changes except that it will make a reference to both 4 CSR 240-20.065(1)(C)6. and 4 CSR 240-20.065(1)(C)7. of the net metering rule and then delete paragraph (1)(D)5. of the proposed rule because it is no longer needed. In addition, the following changes to section (1) are made: existing subsection (1)(C) becomes subsection (1)(A) and the remaining subsections are re-lettered accordingly. Because the definition was deleted, no additional changes are needed in response to Ms. Tietjen's comment.

COMMENT #3: Subsection (1)(D): Staff and Dane Glueck, in his capacity as president of StraightUp Solar and as president of Missouri Solar Energy Industries Association (MOSEIA), each recommended changing the definition in subsection (1)(D) to recognize alternative ownership situations for customer-generators. The proposed change adds "lessee" to the definition of "customer-generators." In addition, staff, Leland Jason Parker as the owner of Certified Solar Solutions, and MOSEIA recommended adding the words "or leased" to section (4). Gillies Werner, president of Tech Power Systems, also commented that the current language might prevent any third-party ownership or lease agreements and prevent purchased power agreements. Claudia Eyzaguirre on behalf of Vote Solar Initiative also recommended allowing third-party ownership. Ms. Eyzaguirre stated that third-party purchased power agreements might be used as a type of financing for commercial owners to overcome the up-front costs of installing solar energy generation. Mr. Parker and Mr. Vaughn Prost, C.E.O. of Missouri Solar Applications, LLC, supported the changes to the definition recommended by MOSEIA. Mr. Parker also testified that the words "the party" should be deleted from paragraph (1)(D)2.

Jennifer Elam on behalf of US Solar Distributing commented that the definition should not be expanded to allow third-party leasing programs unless the systems are one hundred kilowatts (100 kW) or greater. Ms. Elam also commented that paragraph (1)(D)2. also should not allow third-party ownership through a lease or purchase power agreement. Ms. Elam stated that her experience in other states is that this will open up the market to national competition too early and will not allow the local installers to become established in the market.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the majority of the comments that the definition of "customer-generator" should be expanded to allow alternative ownership arrangements. This will allow the most participation and support the generation of renewable energy in Missouri. Therefore, the commission shall add "lessee" to subsection (1)(D), and also will add the words "or leased" to section (4). The commission disagrees with Ms. Elam that including third parties in this manner will open up the market too quickly. The commission also disagrees that the words "the party" should be removed. The commission determines that the requirement for the electric generating unit to be located on the account holder's property should remain. Thus, there is a connection between the generation unit and the account holder as referred to in subsection 393.1030.3, RSMo. The commission makes no additional changes as the result of these comments.

COMMENT #4: Subsection (1)(J): Jeff Deyette, Assistant Director, Energy Research and Analysis for the Union of Concerned Scientists, recommended that the commission define additional attributes of a renewable energy credit (REC). Mr. Deyette suggested including: the location of the generator; the vintage of the generator determined by when it was first operational; and possibly the emissions produced or avoided by the generator to prepare for federal cap-and-trade legislation. No specific language was recommended.
RESPONSE: At this time, preparing for federal energy legislation such as "cap-and-trade" is not practical. Any number of regulations on the federal level may affect this rule. In addition, because the commission is requiring the use of its designated tracking system as explained elsewhere in these comments, additional items will be recorded through that system and need not be duplicated here. The commission made no changes as a result of this comment.

COMMENT #5: Section (1)(K): Bernard Waxman commented that the commission should only allow solar, wind, and biomass as part of the renewable energy counted. Mr. Waxman wants the rule to state that no nuclear or fossil fuels are counted as part of the renewable energy standard (RES). Henry Rentz testified that animal waste may be added to the definition of renewable resources in this legislative session.
RESPONSE: The commission defined renewable energy resources to mean the same as the definition as set out currently in section 392.1025, RSMo. Thus the commission made no change as a result of these comments.

COMMENT #6: Edits to subsection (1)(K): Mr. Parker recommended a comma be deleted in paragraph (1)(K)2., and that the word "one (1)" should be changed to "any" in paragraph (1)(K)9.
RESPONSE AND EXPLANATION OF CHANGE: Instead of deleting the comma in paragraph (1)(K)2. as Mr. Parker suggests, the commission will leave the comma and insert the word "photovoltaic" (PV) prior to the word "panels" to clarify that this is a list of items. The commission will also make the other change that Mr. Parker recommended in paragraph (1)(K)9.

COMMENT #7: Subsection (1)(M): Public counsel recommended that the definition in subsection (1)(M) be amended to delete the word "periodic" and add the words "no more than once per calendar year."
RESPONSE: The restriction that public counsel is seeking is already included in the RES rate adjustment mechanism (RESRAM) portion of the rule at paragraph (6)(A)8. Because paragraph (6)(A)8. also contains a reference to an exception to the once-per-year rule, the commission determines that public counsel's change would make the rule less clear. The commission will make no change as a result of this comment.

COMMENT #8: Subsection (1)(N): Empire District Electric Company (Empire) commented that as a result of the RES, Empire will lose revenue it receives from National Voluntary Renewable Energy Certificate sales. Empire requests that the commission include a provision which includes revenue losses that are directly attributable to compliance with the RES in the definition of RES compliance costs.

Mr. Parker commented that Empire will not lose any revenue as a result of the RES. He reasoned that Empire may continue to sell those renewable energy credits (RECs) or it may choose to count them toward compliance, whichever makes the best business sense.
RESPONSE: There are many factors that will affect the level of REC revenue a utility can collect on a going-forward basis, so any effort to quantify the specific impact of the RES rule on such revenue levels in isolation is speculative. Further, the commission traditionally does not recognize "lost revenues" as a component of an "extraordinary cost" eligible for recovery in rates by energy utilities outside of a general rate case or outside of the test year. For example, the commission has generally allowed electric utilities the opportunity to defer, and subsequently recover, in rates the cost of extraordinary and material storm outages. But the commission has not allowed companies to claim lost revenues (from when their customers were out of service as a result of the outage) as a component of their extraordinary losses for subsequent rate recovery purposes. Thus, the commission will not include a provision as Empire has suggested. The commission makes no change as a result of this comment.

COMMENT #9: Subsection (1)(P): Public counsel recommended adding clarifying language to the end of paragraphs (1)(P)1. and (1)(P)2.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the definition should be clarified so that it includes the other types of proceedings in which an RESRAM is determined. Thus, the commission adds the words "continued, modified, or discontinued" to the end of paragraphs (1)(P)1. and (1)(P)2.

COMMENT #10: Subsection (1)(Q): KCPL suggested adding the word "electric" to this subsection to clarify that these solar thermal sources do not include solar water heating. Mr. Parker recommended deleting the comma after "cells."
RESPONSE AND EXPLANATION OF CHANGE: The KCPL recommendation is not needed since the existing language already requires the "generation of *electric* energy." Thus, no change is made as the result of that comment. In response to Mr. Parker's comment, the commission determines that this is a list of items and, therefore, the comma should remain. To add clarity to the list, however, the commission will insert the word "photovoltaic" before the word "panels."

COMMENT #11: Subsection (1)(R): Commissioner Terry Jarrett commented that the definition of staff be rewritten to exclude those who are not part of the "staff" of the commission.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Commissioner Jarrett's definition and will adopt it. In addition, the commission will exclude the general counsel for the commission from the definition. Thus, the commission changes the definition in subsection (1)(R).

COMMENT #12: General changes to section (2): KCPL recommended that the rule be considered as a baseline for renewable energy investment and should not prohibit additional, prudent investment in renewable energy generation. KCPL suggested additional language to add to section (2) to clarify this point. Missouri Energy Development Association (MEDA) and Union Electric Company, d/b/a AmerenUE (Ameren) also supported this comment. Public counsel testified that the concept was a good one, but suggested a slight change so that instead of "or the prudent implementation of . . ." the text would read "and are consistent with the prudent implementation of . . ." MEDA also commented that the rule should not preclude an REC from counting toward compliance with the RES even if that facility was not built specifically to comply with RES rule requirements.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the rule should not limit the prudent implementation of renewable energy generation in excess of the RES. Thus, the commission will add the language for clarity. The commission will also adopt the change suggested by the public counsel. In addition, the commission finds nothing in the proposed rule which would preclude an REC from counting toward compliance with the RES. Therefore, no additional change is made as a result of MEDA's comment.

COMMENT #13: Changes to subsections (2)(A) and (2)(B) regarding geographic sourcing and bundling: Staff filed written comments suggesting the commission modify section (2) by removing any restrictions on the source of RECs utilized for compliance with this rule. Staff stated that subsection 393.1030.1, RSMo, 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. Staff also notes that the final sentence of subsection 393.1030.1, RSMo, explicitly gives an incentive for in-state generation but does not limit energy or RECs to the geographic boundaries of Missouri. Michael Taylor on behalf of staff also testified that as a practical matter a limitation to the contiguous forty-eight (48) states or the North American continent was probably more reasonable.

MEDA, Ameren, and KCPL each suggested revising subsections (2)(A) and (2)(B) to unbundle the sale of electricity from the renewable energy resources. MEDA and KCPL argued that bundling the REC with the electricity is not consistent with national energy policy trends and provided information showing how other states handle this issue. MEDA, Ameren, and KCPL also stated that bundling the REC and the electricity will drive up the average cost of the delivered renewable energy and will be a less flexible approach for the companies. MEDA, Ameren, and KCPL suggested that a more reasonable geographic restriction is to require RECs to be sourced within the Regional Transmission Organizations (RTOs) that the Missouri electric service providers operate within or within a reasonable distance from Missouri.

Empire commented that it is impossible to tell which electrons are delivered to which customers, thus making section (2) unenforceable as written. Empire suggests modifying subsection (2)(A) to allow a company to count its Missouri-jurisdictional portion of electrical energy generated by renewable resources that is delivered to the bulk power grid toward the utility's RES requirements. In addition, Empire comments that because of the consolidation of balancing authority in the Midwest Independent Transmission System Operator (MISO) region, and possibly in the Southwest Power Pool (SPP) region, any renewable energy generator located within a regional transmission operator (RTO) or independent system operator (ISO) region in which a Missouri investor-owned utility is a member should be considered to be an eligible resource for RECs.

Public counsel's written comments were generally in favor of the rule as written; however, Ryan Kind testified that public counsel would also support limiting the geographic area to the SPP and MISO areas.

The Missouri Industrial Energy Consumers (MIEC) commented that there is no basis in the law for restricting the use of renewable resources located outside of Missouri. MIEC stated that the way the rule is currently written increases the costs to comply. MIEC expressed that the economic interests of in-state developers should not take precedent over the interests of electric customers in least-cost renewable resources.

With regard to providing proof that electricity was sold to Missouri customers, Renew Missouri recommends that the rule "provide for a contract path or transmission path as a means for tracking renewable energy." Mr. P. J. Wilson also testified that he was opposed to an RTO/ISO footprint for geographic sourcing of RECs. He stated that this would allow RECs to be purchased from as far away as Texas and Canada. He also cautioned that the footprint of these organizations could change which could be problematic.

MOSEIA is generally supportive of the rule as written, but suggests language that would define "energy delivered" or "energy sold" to Missouri customers as energy on distribution lines serving primarily Missouri customers. MOSEIA suggests that this will encourage the renewable energy to be produced within or near Missouri and believes this was the intent of Proposition C. Mr. Bob Solger the owner of, and Carla Klein on behalf of, the Energy Savings Store; Jeff Lewis, president of MidAmerica Solar LLC; Mr. Glueck; Mr. Prost; Mr. Werner; Zeke Fairbank of the Alternative Energy Company; Mr. Parker; Ms. Elam; Arthur Caido; and numerous other commenters supported the comments of MOSEIA. In addition, Ms. Elam and Mr. Werner commented that the purpose of Proposition C was to grow sustainable Missouri jobs, and for that reason this provision should not be changed. Mr. Caido stated that he was waiting for these rules to be finalized in order to get back into the solar installation business after being out of the business for some time. He also believes that many homeowners are waiting to install systems until after the rules are in place. Ms. Klein testified that the solar rebate had already started to grow business in Kansas City and St. Louis. Ms. Klein also testified that keeping the energy produced in Missouri could help the three (3) major metropolitan areas in the state to meet there federal air quality standards.

Vote Solar commented that the geographic sourcing provisions will bring the associated benefits of solar energy such as reducing strain on the electrical grid, avoiding line losses, ensuring stable energy prices, providing cleaner air, and bringing much needed new jobs and economic growth to the state of Missouri.

Barbara O'Neill on behalf of enXco commented that developing PV sites within Missouri will solidify the state as a PV-installation leader. She further believed that Proposition C requires that the electricity and S-RECs be deliverable to Missouri customers. Even if the requirement does not remain, with the Missouri preference her company will be able to provide S-RECs more economically than out-of-state resources. Ms. O'Neill stated that S-REC markets are currently actively trading S-RECs from two hundred twenty-five dollars ($225) in Delaware to six hundred sixty-five dollars ($665) in New Jersey (citing the website www.srectrade.com). Ms. O'Neill also commented as to other benefits of building solar generation in the state of Missouri.

Ms. Heisinger, on behalf of the Wind Alliance, made comments in support of the current geographic sourcing language stating that this was the intent of the voters in Proposition C. The Wind Alliance argued that the current geographic sourcing language is what is mandated by the statute when it uses the words "sold to Missouri consumers." The Wind Alliance commented that to interpret those words as applying to the calculation of the portfolio percentages would render the words "each electric utility's sales" meaningless and redundant, and would be contrary to the rules of statutory construction. The Wind Alliance also argued that looking to the intent of the lawmaker, in this instance the voters of the state of Missouri, is the primary rule of statutory construction, citing to *Missourians for Honest Elections v. Missouri Elections Comm'n*, 536 S.W.2d 766, 775 (Mo. App. 1976). Ms. Heisinger stated that she drafted this provision and it was not meant to preclude unbundling of RECs. She further stated that the commission could limit the geographic source of the electricity while unbundling the REC from the electricity.

The Wind Alliance also commented that compliance with the current geographic sourcing requirement is not burdensome and does not require "tracking electrons." The Wind Alliance provided information showing that numerous other states require an in-state or in-region sourcing of renewable energy. The final comment from the Wind Alliance on geographic sourcing is that the proposed rule does not violate the Commerce Clause.

The Missouri Laborers' Legislative Committee commented that it supports the voters' intent to have renewable energy delivered to Missouri utility customers and to support the development of new industry in the state.

RESPONSE: The voters' approval of Proposition C in November

2008 resulted in subsection 393.1030.1, RSMo. That subsection directs the commission to "prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources." In addition, the statute 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 provision in the statute providing that "[a] utility may comply with the [portfolio] standard in whole or in part by purchasing RECs," read in isolation, does not require delivery of electricity into Missouri. Presumably, a utility could purchase an REC from a producer in another state that delivered renewable energy in that state, assuming the REC associated with that energy was not utilized under another state's portfolio standards. But every word, clause, and sentence in the statute should be given effect and harmonized. Subsection 393.1030.1, RSMo, also requires that the portfolio requirements apply to the utility's "sales" and to "all power sold to Missouri consumers whether the power is self-generated or purchased from a source in or outside of this state."

One (1) objective of the statute is clearly to encourage sales of renewable energy to Missouri customers whether the electricity is produced in Missouri or not. Another objective is to favor Missouri generation; each kilowatt-hour of energy generated in Missouri counts as one and twenty-five one-hundredths kilowatt-hours (1.25 kWh) for purposes of compliance. (Subsection 393.1030.1, RSMo.) Given the statute's objective of encouraging the sale of renewable energy from any source to Missouri customers, and the preference for Missouri generation, it is not unreasonable or inconsistent with the statute that the rule defines an REC as representing Missouri generation or Missouri delivery. The only type of REC that is restricted by the proposed rule is where the renewable energy is generated outside of Missouri and delivered outside of Missouri. Under the rule, such an REC will not qualify to satisfy the portfolio standards. Since RECs are defined by the statute simply as one megawatt-hour (1 MWH) generated from a renewable energy source, and the statute itself encourages Missouri generation and delivery to Missouri, the rule as proposed is a reasonable implementation of the objectives of the statute.

Consistent with the statute, a utility can still comply with the portfolio requirements by purchasing RECs. But valid RECs exclude those arising from generation coupled with delivery outside Missouri. The market for RECs may be restricted but that is not inconsistent with the view of the market for RECs taken by the Federal Energy Regulatory Commission (FERC) and other states.

Missouri voters passed a statute which specified that a renewable portfolio standard would apply to power sold to Missouri customers whether generated inside the state or outside. They did that because they wanted cleaner energy delivered to their homes and they wanted the economic advantages renewable energy generation will bring to the state. In order to achieve these goals, it is necessary to develop an in-state renewable energy industry. This rule recognizes that fact and sets its geographic sourcing in order to encourage and develop a wide-range of renewable energy resources in the state in conjunction with the requirements of the statute. Therefore, the commission makes no changes as a result of these comments.

COMMENT #14: New paragraph (2)(B)3.: Staff commented that paragraph (2)(B)2. should be modified to ensure that customer-generated RECs will qualify for Missouri RES compliance regardless of the net amount of energy provided to the electric utility. Staff recommended language to add to the existing paragraph.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment of staff. This change will allow and encourage electric utility customers to generate their own electricity through renewable methods and it will also give the utilities the benefit of those customer-generated RECs. The commission will add the language as a new paragraph (2)(B)3., with one (1) slight modification to make clear that the utility must purchase the REC for it to be counted.

COMMENT #15: Changes to subsection (2)(G): Staff, MEDA, KCPL, Ameren, and Empire each suggested deleting subsection (2)(G). Staff explained that 4 CSR 240-20.015, Affiliate Transactions, addresses many of the same items in subsection (2)(G), making it redundant. The utilities also expressed concerns that requiring an independent auditor in this part of the rule is not only duplicative, but will be more costly and discourage the utilities from owning renewable generation. Mr. P. J. Wilson testified that the requirement for an independent auditor was put in the rule in order to avoid the same mistakes made by other states. Mr. Parker suggested a grammatical change.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the provisions of subsection (2)(G) are mostly redundant with the current affiliate transactions rule. Thus, the commission will delete a majority of the text of subsection (2)(G), but it will insert a reference to the affiliate transactions rule. Because the commission is deleting the text, no additional change is necessary in response to the grammatical suggestion.

COMMENT #16: Commission-designated tracking system: Staff proposed deleting subsection (3)(F) and revising subsection (3)(G) to require that utilities use the commission-designated tracking system. Staff stated that this change will enhance the integrity and verification of REC tracking and REC retirement for compliance purposes. Staff stated that if the commission makes the change as suggested, a change to paragraph (2)(B)1. is also necessary.

The Union of Concerned Scientists (UCS) supported having a designated tracking system to track and verify RECs. The UCS also commented that the commission should remove the option of validation of an REC by a "generator's attestation" from subsection (1)(J). UCS recommended the commission name the selected tracking system in the rule.

MEDA and Ameren requested revision of the rule so that a third-party tracking system is optional. The UCS argued that a mandatory system increases costs for compliance and creates a substantial burden. KCPL also recommended making the commission-designated third-party tracking system discretionary instead of mandatory. In addition, KCPL recommended changes to subsections (1)(J), (3)(A), and (3)(G) and subparagraph (7)(A)1.I. to implement its suggested rule change.
RESPONSE AND EXPLANATION OF CHANGE: The statutory language of subsection 393.1030.2, RSMo, requires that the commission "select a program for tracking and verifying the trading of renewable energy credits." The statute also directs the commission to establish a rule that allows for recovery of the electric utilities' "prudently incurred costs." Thus, the statute is clear that the preference is for the commission's designated tracking system. But because the major goal of the statute is to increase the amount of renewable energy in the state of Missouri, and the companies have stated that a mandatory system will increase the cost of that energy, the commission will add a caveat to the mandatory tracking system. The commission will provide the option of showing good cause to use a different system for tracking and verification.

The commission will, therefore, delete subsection (3)(F). The commission will also delete the words "or other equivalent electronic mechanism" and the last sentence from subsection (3)(G). In addition, the commission will add the words "unless otherwise ordered for good cause shown" to create an option for a company to request a variance from this provision for good cause. The commission will also re-letter the remaining subsections. The commission will change the reference to subsection (3)(H) to subsection (3)(G) in paragraph (2)(B)1., and the commission will make other section and subsection reference changes as necessitated by the re-lettering. Also, because

the current language of subsection (11)(C) could be interpreted as conflicting with the ability to grant a variance or waiver from new subsection (3)(F), and for reasons stated elsewhere in response to staff comments, the commission will delete subsection (11)(C).

The commission will also make changes to subsection (1)(J) to include the commission-designated tracking system as a method to validate an REC as recommended by KCPL. The commission will also make the change to subsection (3)(A) recommended by KCPL except that the commission's designated tracking system will be mandatory, not discretionary.

The commission will not make KCPL's suggested change to subparagraph (7)(A)1.I. because to do so would appear to make the commission-designated tracking system discretionary. All RECs should go through the tracking system, even if they are purchased from small generators unless a waiver has been granted by the commission.

The commission will not delete the "generator's attestation" as an option from subsection (1)(J) as recommended by the UCS because the certification of the REC and the required use of the commission-approved tracking system are two (2) separate but related activities. Certification through the tracking system will be sufficient for the overwhelming majority of RECs which are straight-forward. But there may be a few unique RECs that will require a different form of documentation.

Also, the commission will not name the selected tracking system in the rule because the vendor was chosen through a request for proposal (RFP) process as required for state agencies. Because the current vendor could change, it is not appropriate to codify the specific vendor in a state regulation, thus binding the commission to use that vendor until the rule can be changed.

COMMENT #17: General comments to section (3): KCPL supported the provisions of subsection (3)(B) because accounting for RECs only on a yearly basis, rather than monthly or daily, will allow for a much simpler annual reconciliation of RECs for compliance and will reduce the administrative costs of tracking RECs. KCPL suggested subsection (3)(C) be clarified by replacing the word "applicable" with "required" at the end of the sentence in subsection (3)(C).
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with these comments and the clarification. The commission will make the suggested clarification to subsection (3)(C).

COMMENT #18: Subsection (3)(K): Staff suggested adding two (2) months to subsection (3)(K) to recognize the settlement date lag times inherent with the RTOs and ISOs associated with an electric utility. KCPL recommended inserting the word "produced" in the third sentence of subsection (3)(K) as a clarification.
RESPONSE AND EXPLANATION OF CHANGE: The commission will not make the change recommended by KCPL because the word changes the meaning of the provision. The intent of this section was to allow the utilities to "true-up" their REC retirements for the compliance year after they have their annual statistics for that year. Since some of this information is not known on December 31 of the compliance year, they would possibly have to retire too many RECs to ensure they complied. By allowing the three (3)-month interval after the compliance year, they could hit their target without retiring too many or too few RECs. In any case, the RECs retired would have been generated during the compliance year or a preceding year. KCPL's proposal would allow RECs created after the compliance year to be utilized. That is not the intent of the RES. If the RECs were produced in January, February, or March of the year following the compliance year, the utility would essentially be borrowing from a future year to meet compliance in a previous year.

The commission agrees with staff's comment and will make the change to subsection (3)(K). The commission also makes the word "REC" plural in the second sentence.

COMMENT #19: Subsection (3)(L): Staff suggested that the commission amend subsection (3)(L) to address additional aspects of aggregation. Staff commented that several entities suggested that aggregation may be utilized to lessen the administrative burden for small generators. Staff recommended language to replace subsection (3)(L). Mr. Parker and MOSEIA also commented that the reference to "fractional" RECs was confusing in subsection (3)(L). MOSEIA stated that an REC could only exist once it is completely generated, and therefore there were no "fractional" RECs.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with most of staff's amendment to subsection (3)(L) to ease the administrative burden on small generators. The commission will not adopt the staff's language in total as it is largely explanatory and creates further confusion. Staff's recommended language also uses the term "fractional RECs." The commission does not find the term "fractional RECs" to be confusing and will not make any change in response to Mr. Parker and MOSEIA's comment.

COMMENT #20: Section (4): Renew Missouri, MOSEIA, Mr. Werner, Mr. Fairbank, and staff commented about removing the five-hundred-watt (500W) minimum size to qualify for the solar rebate and the Standard Offer Contract (SOC). Henry Robertson for Renew Missouri commented that the minimum size should be removed because there is no such limit in the statute and small customer-generators should be allowed to participate in the rebate. In addition, MOSEIA, Mr. Werner, and Mr. Fairbank commented that the minimum should be removed because current micro-inverter technology will now allow systems under five hundred watts (500W) to be included. Mr. Fairbank states that micro-inverters can be coupled to systems one hundred sixty-five watts (165W) to two hundred fifteen watts (215W) allowing a small system to be installed initially and expanded as financing allows. Staff stated at the hearing that five hundred watts (500W) was an arbitrary number.
RESPONSE AND EXPLANATION OF CHANGE: The proposed language in the rule is not based on any particular facts necessitating that minimum size. The witnesses also stated that technology now allows for smaller systems to be connected. In addition, allowing smaller systems to participate in the rebate will increase the number of people who can participate in the program, thus increasing the amount of renewable energy generated. Further, there is already a requirement to have the generating equipment interconnected with the system which will naturally limit the size of systems qualifying for the rebate. Therefore, the commission will delete the requirement that the generating system have a rated capacity of at least five hundred watts (500W).

COMMENT #21: Subsection (4)(B): KCPL suggested a clarification in subsection (4)(B) of the rule to make clear that it is the customer's responsibility to determine if the system meets the eighty-five percent (85%) of the solar resource used criteria. KCPL further stated that the installer is the best person to determine this; however, the customer is the logical one to make responsible.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with KCPL that the customer's installer is the best person to make the assessment of whether eighty-five percent (85%) or more of the solar resources will be utilized. Thus, the commission will adopt KCPL's change with some modification. The commission will add the words "as verified by the customer or the customer's installer at the time of installation" to the end of subsection (4)(B). This will make the customer and not the electric utility responsible for determining if the system meets the criteria.

COMMENT #22: AC or DC: KCPL recommended the California Energy Commission (CEC) standards instead of the direct current (DC) method currently contained in the rule because the CEC allows for payment only for energy actually put on the system and the CEC evaluates components under practical test conditions instead of laboratory conditions. Changing to the CEC standards would also mean changing to the alternating current (AC) method. With regard to subsection (1)(S), KCPL argued that the term "Standard Test

Conditions" is not referenced in the rest of the rule so it is not necessary and should be deleted.

Other commenters including Renew Missouri, Mr. Werner, and MOSEIA stated that the DC method should remain because the statutory language for the rebate in subsection 393.1030.3, RSMo, refers to "installed watt," not the actual power which is put on the electric utilities' system. In addition, the commenters stated that the name plate rating for a typical system would be stated in DC watts. Thus, the commenters argued that the DC method should remain.

RESPONSE: The commission agrees with the majority of the comments requesting the DC method remain in the rule. The systems being purchased contain a manufacturer's rating for DC and the statute specifically refers to "installed" watts not interconnected watts. Therefore, the commission will not change the DC to AC for determining eligibility for the rebate and the SOC. In addition, the commission will not delete the definition in subsection (1)(S) as it is used elsewhere in the rule and would only need to be deleted if the commission switched the criteria to AC.

COMMENT #23: Subsection (4)(D): Several comments suggested a rewriting or clarification of subsection (4)(D). Many commenters stated that the language requiring new equipment should remain in the subsection because this will ensure that reliable equipment is installed. The comments also indicated that the language needed to be clarified so that it is clear a system will qualify for a rebate up to twenty-five kilowatts (25 kW) installed. This will allow a customer to install a small system and expand it as financing allows, and still receive the benefit of the rebate. Vote Solar recommended adding that the maximum rebate would be fifty thousand dollars ($50,000).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the subsection needs to be clarified. The intent is that an account holder can get a rebate up to twenty-five kilowatts (25 kW) installed, even if that "system" starts small and is expanded later. Therefore, the commission will rewrite subsection (4)(D). In this rewrite, the commission links the rebate to the "retail account," rather than to the "lifetime of the solar electric system." The commission did not adopt Vote Solar's recommendation because subsection 393.1030.3, RSMo, does not limit the rebate to two dollars ($2) per watt.

COMMENT #24: Subsection (4)(E): The UCS recommended that the commission clarify subsection (4)(E) to require net metering. Vote Solar supported this provision as well as subsections (4)(F) and (4)(G) and believed that those provisions will provide validation for project deployment and promote the prudent use of ratepayer funds.

RESPONSE AND EXPLANATION OF CHANGE: The commission will add a comma and the word "a" to the subsection so that it is clear the system must meet the net metering rule requirements or a commission-approved tariff for the purposes of customer-owned generation. No other changes were made as a result of these comments.

COMMENT #25: Standard offer contract: Ameren, Empire, and KCPL argued that the SOC is beyond the scope of the statute. Ameren and KCPL stated that electric utilities must have the option, not the obligation, to obtain S-RECs through an SOC. KCPL suggested language to make the offer discretionary and to break down the offer based on the size of the system.

Renew Missouri and the other solar advocates believed the SOC should be mandatory in order to establish a market for small and mid-size solar systems, thus maximizing the solar energy in the state. Mr. Glueck, Ms. Elam, Mr. Prost, and the other solar advocates also stressed that the SOC will aid in the creation of numerous solar industry jobs and increase economic development in the state. Mr. P. J. Wilson testified that the SOC will provide certainty and will be like the rebate in aiding homeowners to make solar installations.

Ameren and KCPL also argued that the SOC creates inefficiency by requiring electric utilities to purchase ten (10) years of S-RECs from a source which is unlikely to be the lowest-cost source of S-RECs or solar generation. Ameren stated that the SOC inhibits the electric utility's ability to plan solar projects and may contribute to a total subsidy that actually exceeds the cost of installing solar generating facilities. Additionally, Ameren stated that if the SOC is retained, the electric utilities may "over-comply" and the commission should address in the rule exactly how and when the cost of over-compliance will be recovered.

Many commenters, including MEDA, KCPL, Vote Solar, MOSEIA, and the UCS argued that there should be different payment terms for different sized systems. KCPL suggested specific language to accomplish this. Vote Solar and others recommended various ranges of productions for different contract terms. Renew Missouri commented that adding too many tiers and a five (5)-year contract period will add complexity and costs to the system.

MOSEIA and James M. Holtzman also provided new language for subsection (4)(H). Mr. Holtzman, an architect and LEED AP, completed a cost-benefit analysis showing the payback on approximately sixty megawatts (60 MW) of generating capacity in solar production in Missouri that he estimates the law requires. Given his stated assumptions, he estimated more than two and a half (2.5) billion dollars returned to the state economy from Proposition C. Mr. Holtzman also recommended that the commission set specific language as to the nature and pricing of the RECs.

Staff recommended clarifying changes to the rule as proposed. Staff suggested that the use of "generally accepted analytical tools" should be clarified, as well as the timing of the contract. Staff's recommendation also breaks down a portion of the subsection into three (3) paragraphs. Staff also proposed deleting the phrase, "or anytime thereafter."

Certified Solar Solutions testified that the S-REC payment has to be up-front, not "anytime thereafter," and not a monthly option. The UCS recommended a clarification to the timing language also so that it was clear that the SOC payment is a separate item from the solar rebate. Vote Solar recommended leaving that language but changing "or" to "and" to ensure that SOC is offered for all solar rebates.

MOSEIA recommended language to ensure that up-front payments actually occur up-front, that the term of contract is ten (10) years, and that the customer has the option of a lump-sum or a payment over time.

RESPONSE AND EXPLANATION OF CHANGE: Section 393.1030, RSMo, requires that the commission "make whatever rules are necessary to enforce the Renewable Energy Standard." The RES, in turn, requires not only a percentage of the electric utilities' sales come from renewable energy, but also that "at least two percent (2%) of each portfolio requirement shall be derived from solar energy." Further, as the commission stated above, the intent of Proposition C is to promote the generation of renewable energy, and specifically, to promote the generation of that energy in Missouri.

One of the main benefits of renewable energy generation in Missouri is the boost to the state economy as numerous solar industry small business operators testified at the comment hearing. Those same small business people testified that the best way to promote solar generation in the state is to provide some certainty for the individual customer-generators and other investors in solar generation through both the solar rebate and the SOC.

Much in the same vein as geographic sourcing, standard offer contracts encourage and promote the commercial and residential generation of renewable energy. This allows the utilities to purchase power from their customers and make progress toward meeting the renewable requirements, especially the solar requirements in the statute. Thus, the commission originally included in its proposed rule the mandatory SOC. Many of the commenters, however, believe that requiring the SOC is beyond the commission's authority. In addition, the customer representatives argue that requiring the SOC may add costs to the utility customers because purchasing S-RECs from individuals may not be the least-cost method of compliance.

After considering the comments, the commission determines that

it will not require the SOC be mandatory. Instead, the commission will set out in the rule that the SOC may be offered by the utilities with commission approval of a tariff providing the details for an SOC.

Commenters also asked that the commission set a price for the S-RECs in order to encourage investors by giving them more certainty about the market. For reasons stated elsewhere, the commission will not set a price in this young market with the limited information provided in the comments. The commission believes, however, that allowing the utilities set the price for S-RECs filing a tariff, the S-REC prices will be published in such a way as to give additional certainty to the market.

Many of the comments related to the need to break down the SOC into different terms for different sized systems. KCPL provided language setting out a structure for this breaking down the size of the systems into categories of three kilowatts (3 kW) or less, three kilowatts (3 kW) to ten kilowatts (10 kW), greater than ten kilowatts (10 kW), and greater than twenty-five kilowatts (25 kW). Because the commission is no longer requiring the SOC, these provisions are not necessary, but they are instructional for evaluating an SOC tariff when it is presented to the commission.

The commission, therefore, deletes subsection (4)(H) and replaces it with a revised (4)(H) providing for a discretionary SOC. In addition, the commission notes that it now believes that the estimates of fiscal compliance provided by the utilities and used in the original fiscal note did not include a mandatory SOC and therefore was underestimated. The commission will make note of this in its fiscal note assumptions.

COMMENT #26: Time period for purchase of S-RECs in an SOC: KCPL stated that if the SOC is retained, the period the electric utility is required to purchase S-RECs should be shortened from ten (10) years. MEDA stated that ten (10) years is an inappropriately high subsidy and there should be different length SOCs for different size systems.

Renew Missouri testified that there was no precedent in other states for shortening the contract period to less than ten (10) years and it has already been shortened from twenty (20) years. Further, Mr. P. J. Wilson stated that ten (10) years was consistent with the life of the systems.

Vote Solar argued that the SOC should have the option to spread payment over fifteen (15) years for PV systems greater than 100 kilowatts (100 kW). And, Empire commented that the S-RECs should only relate to periods when electricity is actually being generated by a solar electric system.

RESPONSE: The commission has determined that the SOC should not be mandatory. Therefore, no additional change is needed as a result of these comments.

COMMENT #27: Exemption from SOC requirement: Staff suggested making an addition to subsection (4)(H) to allow a company an exemption from the requirement to offer an SOC if the utility "has acquired a sufficient number of S-RECs for the current and subsequent calendar year." Along with this suggestion, staff recommended a reporting requirement be added to subsection (7)(A) for reporting these exemptions.

RESPONSE: The commission has determined that the SOC should not be mandatory and therefore, this amendment is not necessary.

COMMENT #28: Establish an S-REC price: Ameren argued that if the SOC is retained, the commission needs to establish an S-REC price. Virginia Harris for the Sierra Club also commented that S-REC prices should be closely supervised or they may sink too low. Mr. Holtzman, Vote Solar, Mr. Glueck, Mr. Prost, Mr. Werner, the UCS, Ms. Elam, and MOSEIA also recommended that the commission set S-REC prices.

MOSEIA provided an interactive spreadsheet for determining the S-REC price and suggested it be set on an annual basis. Vote Solar suggested an annual workshop process for setting the S-REC value for systems less than one hundred kilowatts (100 kW). Vote Solar further stated that S-REC values for small systems should be at least eighty percent (80%) of the weighted average price of S-RECs that come in through the request for proposals (RFP) bidding process or the difference between the cost of solar, the rebates, and the levelized cost of energy. Mr. Holtzman suggested specific language for this provision as well.

RESPONSE: The commission cannot practically set an S-REC price in this rulemaking. The commission has not received sufficient information about the market value of S-RECs in Missouri or elsewhere to make that type of determination. Also, once this rule is effective and the market adjusts to the incentives and requirements contained in it, the market price may also change. Thus, the market price today may not be a good gauge of the market price after the effective date of this rule.

On its face, the concept of having an annual workshop to set the S-REC price seems like a good one. But the commission cannot set such a rule of general applicability through the workshop process. The commission must set those types of rules through the notice and comment rulemaking process such as this one. In order to publish a new rule for the upcoming year, the commission would have to begin the workshops almost a year in advance to accommodate the rulemaking process. Thus, it is not practical to set an S-REC price through the workshop process.

The commission determines that the market will be the best guide for setting an S-REC price and the commission has provided a method to produce some certainty in the adoption of new subsection (4)(H). The commission will not make any additional changes to the rule as the result of these comments.

COMMENT #29: Subsection (4)(I): Staff recommended revising subsection (4)(I) to ensure that S-RECs purchased under the one (1)-time lump sum contract are not utilized for other purposes.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the additional language proposed by staff to ensure that the S-RECs which are purchased under a one (1)-time lump sum payment will not be sold or traded in another compliance or voluntary market.

COMMENT #30: Timing of the S-REC payment: UCS recommended that customer-owners of solar installations be paid only after the S-RECs are issued and transferred to the utility. KCPL suggested that thirty (30) days for the processing of a solar rebate payment is not sufficient and the time should be sixty (60) days.

RESPONSE: The commission disagrees with both commenters. Numerous commenters stated that it was important for growth in the industry and to encourage installation of small and mid-size renewable generation for the payments to be up-front. The longer the payment period is stretched the more difficult it is for individuals and small businesses to finance the installation of solar generation. Thus, no change was made as a result of these comments.

COMMENT #31: Grandfather clause: MOSEIA suggested that the commission grandfather, for purposes of the SOC, any systems installed between Dec. 31, 2009, and the time the rules become effective.

RESPONSE: The commission cannot make the substantive portions of its rule retroactive. Customers installing renewable generation prior to the effective date of the rule, did so without the expectation that the rule would be applicable to their installations. With regard to the rebate payment and the SOC, the customers and the utilities will have to determine if the system is subject to the rule once the rule becomes effective. The commission made no change as a result of this comment.

COMMENT #32: Subsection (4)(K): Three (3) suggestions were received for clarifying subsection (4)(K). First, MOSEIA recommended deleting the comma after "building permit." Second,

MOSEIA recommended clarifying "full operation" by inserting the word "substantial" before "production of rated electrical generation." And third, Mr. Parker and MOSEIA commented that a clear engineering standard rather than a subjective standard should be used to determine acceptance for the solar rebate.

RESPONSE AND EXPLANATION OF CHANGE: The commission will delete the comma for clarity. In addition, the commission will delete the words "are accepted for the solar rebates" and replace it with "have received a solar rebate" for clarity. The commission will not adopt the language proposed by MOSEIA because it would change the date on which the twelve (12)-month period begins to run. Also, the commission will not add "substantial" before "production" because it does not add any clarification.

Upon further review of the subsection, the commission will correct a typographical error by inserting a missing "/" between "and" and "or," will add an article before "Standard," and will insert the words "with the electric utility" to clarify where the report should be filed.

COMMENT #33: New subsection (4)(M): Certified Solar Solutions and Renew Missouri each suggested that a new subsection (4)(M) be included to allow customers to apply for a new SOC after ten (10) years.

RESPONSE: The commission will not make this recommended change because it does not have sufficient information about the cost and amount of energy expected to be generated from a system after ten (10) years to make such a substantial change in this rule. There is currently nothing in the rule which would prohibit an electric utility and a customer from negotiating a new contract at the end of ten (10) years. No change was made as a result of this comment.

COMMENT #34: Retail rate impact: Staff commented that the current rule sets out the retail rate impact (RRI) cap on an incremental basis averaged over a ten (10)-year period. This means that each rate increase may not be more than one percent (1%) on average over a ten (10)-year period as a result of RES compliance. Staff advocated, however, that the cumulative approach be followed instead. Under the cumulative approach, rates would not rise in total more than one percent (1%) when averaged over a period of time. Staff recommended that period of time for which the averaging will take place to be the time periods set out in Proposition C. Mr. Oligschlaeger for staff testified regarding the RRI calculations of the rule and the difficulty of making hypothetical estimations required by the statute. Staff also commented that for clarity, the word "retail" should be inserted in subsection (5)(A) before "rate impact" in the second sentence.

Public counsel supported the use of the cumulative approach which would include all the RES compliance costs that customers are paying at a particular point in time. Public counsel would average those compliance costs over a ten (10)-year period of time.

Ameren supported a cumulative approach so that the *maximum* rate increase is one percent (1%), not a one percent (1%) increase per year. Ameren also suggested simplifying how the rate increase is calculated by merely taking one percent (1%) of the last approved revenue requirement in a rate proceeding. Ameren further commented that, if the complex calculation called for in the proposed rule is retained, then the RES/non-RES generation scenarios should not be compared on a long-term basis for purposes of calculating the RRI cap, but only over a "one (1)-year forward looking period."

Renew Missouri also opposed the incremental approach set out in the rule. Renew Missouri believes that retail rates may not increase by more than one percent (1%) over the life of the RES but must be averaged to accommodate spikes in RES compliance costs that arise (for example, when a large wind farm comes on-line). Renew Missouri argued that a twenty (20)-year averaging period would be more appropriate.

MIEC opposed the incremental approach and also opposes multi-year averaging. MIEC believed that the reference to "average" in the statute means an average increase over all the rate classes. MIEC also suggested that the numerator and the denominator used to determine the RRI cap be clearly defined in the rule.

Empire expressed its disagreement and displeasure with the statutory and rule requirements to calculate "non-RES" generation by completely ignoring a utility's existing renewable resources in place at the time the RES requirements begin. Empire expressed how difficult it would be to make a calculation which requires it to assume that decisions made in the early 1900's and even in the early 2000's have not been made.

Mr. Wood testifying on behalf of MEDA at the hearing stated that there is an inconsistency in Proposition C which is now reflected in the rule. The inconsistency is that the rate impact cap will be considered in current rate increases, but the analysis required by Proposition C is prospective. Thus, renewable energy that may be considered consistent with the integrated resource plan (IRP) could be objectionable on the basis that it exceeds the rate impact cap. Mr. Wood suggested that one way to address this is to specifically acknowledge that current rate increases that meet the long-term best interest of the electric utility and its customers may cause rates to go up more than one percent (1%).

Mr. Fischer for KCPL had similar concerns to MEDA regarding the difficulty in applying the RRI. He also suggested that the commission should only consider renewable energy that was added as a result of compliance with the RES when determining if the rate cap was met. KCPL supported the incremental approach of the rule as written with some slight modifications which it provided. Mr. Lutz, testifying for KCPL, supported a ten (10)-year averaging period.

Vote Solar supported a ten (10)-year averaging period. Certified Solar Solutions supports the use of multi-year averaging, but does not specify a particular period. MOSEIA, UCS, and US Solar Distributors supported a twenty (20)-year averaging period to match the IRP and allow the best planning opportunities for the utilities.

The Wind Alliance supported the rule as written, but believes a twenty (20)-year average may be more appropriate since purchased power agreements tend to be for twenty (20) years and the current IRP period is twenty (20) years. Elliot Roseman, vice president for ICP International, testified on behalf of the Wind Alliance. Mr. Roseman stated that the Wind Alliance supports the RRI being determined on an incremental basis as set out. Mr. Roseman and the Wind Alliance's suggestions for improvement of the rule is that a detailed approach for the RRI calculation be included so as to avoid a contentious proceeding when the first RES filing is made. In addition, Mr. Roseman provided a model for determining revenue requirement with and without renewable energy on a prospective basis. The Wind Alliance recommended that the commission include these detailed RRI calculations in the RES rulemaking.

RESPONSE AND EXPLANATION OF CHANGE: The retail rate impact question, and how the one percent (1%) "cap" is meant to be applied, is clearly one of the most difficult and complicated tasks for the commission in this rulemaking. And, part of the confusion lies in each party's and each individual's understanding and definition of "incremental" or "cumulative."

In determining how to implement the RRI, the commission looks first to the language of the statute. The commission is required in subdivision 393.1030.2(1), RSMo, to adopt rules that provide "[a] *maximum average retail rate increase of one percent* determined by estimating and comparing the electric utility's cost of compliance with least-cost renewable generation and the cost of continuing to generate or purchase electricity from entirely nonrenewable sources, taking into proper account future environmental regulatory risk including the risk of greenhouse gas regulation[.]" (Emphasis added.) Thus, the commission set out a method of calculating that maximum one percent (1%) retail rate increase and defines the components of that calculation, the assumptions, and other related calculations which will be necessary in making the estimations required by the clear language of the statute.

Matters are further complicated by subdivision 393.1030.2(4),

RSMo, which states that the rules must also make a provision, outside of a rate case, for the recovery of prudently incurred costs or the pass-through of benefits achieved by compliance. Thus, the commission must not only provide for the method and determination of the one percent (1%) "cap," it must also implement that "cap" while allowing prudently incurred costs to be recovered.

Mr. Oligschlaeger explained this RRI and the confusion that it causes very well at the hearing. He explained that the RRI of one percent (1%) is not, per se, a measurement of actual rate impact on customers. And the reason this is so is because the RRI as defined in the statute is a comparison between an actual revenue requirement compliant with the RES and a hypothetical revenue requirement which assumes electricity comes from "entirely non-renewable sources." It is this hypothetical that troubles other commenters, like Mr. Wood and Mr. Fischer, and the way it appears to be internally conflicting. Regardless, of the internal conflict of the statute, the commission's rule must include the RRI cap to be calculated as the statute specifies.

After reviewing the arguments regarding the incremental versus cumulative approach, the commission finds that the cumulative approach with a ten (10)-year average as recommended by the public counsel is the most reasonable interpretation of the requirements of Proposition C. Because the statute clearly calls for an average, the commission must put some meaning to that term and does so by averaging the retail rate impact over a ten (10)-year period. Thus, the averaging will smooth out some of the spikes in the compliance costs and recovery caused by new technology coming on-line in the beginning of implementation.

The commission appreciates the modeling and methodology suggestions provided by the Wind Alliance. Further, the commission recognizes that some details with regard to recovery of RES compliance costs may end up being argued in the first RES filing for each electric utility. However, at this point in the rulemaking, the commission is reluctant to make major changes, or what might be interpreted as major changes, to the calculations as published in the proposed rule. If it becomes apparent when the rule is actually implemented that changes are needed to the rule, or that more specific calculations or formulas should be included, the commission will amend the rule at that time.

It is for all these reasons that the commission determines that the RRI calculation in section (5) should be changed as recommended by public counsel. The commission also adopts staff's clarifying language in subsection (1)(A). And, elsewhere in this rule other changes to this section are explained.

In addition, going from an incremental retail rate impact to a cumulative retail rate impact should greatly reduce the cost of compliance to the utilities and the general economic effect on consumers. The commission will note this change in its assumptions to the fiscal note, as well. However, because numerous stakeholders in this rulemaking have indicated that the original fiscal note was underestimated, the commission will not change the dollar amounts of the fiscal note, but only the assumptions.

COMMENT #35: Greenhouse gas risk calculation: Empire commented that quantification of greenhouse gas risk is "nearly impossible." Renew Missouri stated that an approach of calculating carbon costs using an "adder" should be considered, and that either a workshop on carbon pricing or a common docket for the RES and Senate Bill 376 (codified at section 393.1075, RSMo) would be helpful in dealing with issues concerning avoided carbon costs. UCS commented that the cost of greenhouse gases should be projected by the commission under the assumption of a regulatory structure that sets a mandatory cap on carbon emissions and that also sets a market price for emission allowances.

MOSEIA commented that the word "allowances" should be deleted from the third-to-last sentence in subsection (5)(B) because the cost of the allowances may not include all the costs. For instance, emissions could surpass allowances and result in fines which have a greater effect on the overall cost than allowances alone. MOSEIA also recommended adding "and accepted by the commission" after the requirement to include a justification with any deviations. MOSEIA reasoned that just providing the justification is not sufficient; it must also be recognized by the governing authority.

Mr. Parker commented that the words "internal or contracted" should be added to the last sentence of subsection (5)(B) for clarification. KCPL suggested the words "directly attributable to RES compliance" be added in a similar position.

MIEC believed the RRI cap calculation specified in the proposed rule may lead to double-counting of greenhouse gas impacts and fossil fuel costs.

Public counsel also provided some suggested language revisions for section (5) which were largely clarifying in nature, but which contained a more detailed explanation of the calculation of greenhouse gas risk.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Empire that a quantification of greenhouse gas risk is extremely difficult. One of the mandates of subdivision 393.1030.2(1), RSMo, is to provide a rule which takes "into proper account future environmental regulatory risk including the risk of greenhouse gas regulation." Thus, the commission has no choice but to set that process out in its rule. The commission has studied this calculation at length, first through workshops and then through this rulemaking docket. Of all the solutions offered, the current text with some modifications as proposed by public counsel is the preferable one.

Perhaps additional workshops are in order as suggested by Renew Missouri. Certainly if the federal government passes any significant energy legislation, such work shops will be necessary. However, until that occurs, the outcome is too speculative to incorporate in this rule as the UCS suggests. The commission cannot assume "cap-and-trade" is a given and can only promulgate rules for those things it has the statutory authority to implement.

MOSEIA's point is well taken that "allowances" is too limiting a word to encompass all the various costs. Thus, the commission finds that public counsel's language is appropriate to better define the makeup of the greenhouse gas calculation and to clarify its components. The commission, therefore, adopts numerous changes in the language of subsections (5)(A), (5)(B), and (5)(D) to incorporate public counsel's language. The commission also makes some additional clarifications where necessary. While the commission disagrees with the MIEC's comment, the changes made as a result of public counsel's comments, should address this issue.

The commission agrees that a clarification is necessary in the last sentence of subsection (5)(B). The commission will make the change recommended by KCPL to clarify this sentence. Because the commission adopted this change, Mr. Parker's change is not necessary.

COMMENT #36: Subsection (5)(E): Renew Missouri, Certified Solar Solutions, and UCS stated that costs incurred by utilities to comply with any federal RES rules or requirements should not count toward compliance with the Missouri RES unless the costs would otherwise qualify under the Missouri RES without regard to federal requirements.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that subsection (5)(E) should be clarified as suggested by the commenters. The intent of this provision was to make clear that federal costs and benefits, if necessary to comply with Missouri standards, could be counted. The purpose was not to allow a utility to recover in this cost recovery mechanism federal costs, or have benefits offset, that go beyond what is necessary for compliance with the Missouri RES. The commission will amend subsection (5)(E).

COMMENT #37: Section (6): Staff recommended modifying the beginning of section (6) to include requirements ensuring that the electric utilities receiving rate adjustments through the RESRAM process are based on the true net cost or benefit of RES compliance.

Staff recommended adding the following language to the end of the preamble of section (6): "In all RESRAM applications, the increase in electric utility revenue requirements shall be calculated as the amount of additional RES compliance costs incurred since the electric utility's last RESRAM application or general rate proceeding, net of any reduction in RES compliance costs included in the electric utility's prior RESRAM application or general rate case, and any new RES compliance benefits."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff and will add the recommended language to the end of the preamble of section (6).

COMMENT #38: Subsection (6)(A): Staff commented that other cost recovery mechanisms usually require a rate case to establish a base for the cost recovery mechanism. In the RES, there is no provision for requiring a rate case and so the base must be determined and set in the initial RESRAM filing. Staff, therefore, asked that the commission allow additional time for processing the first recommendation in subsection (6)(A).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff that the initial RESRAM filing will require additional time to sufficiently process. Therefore, the commission will add the language requested by staff to subsection (6)(A) to allow one hundred twenty (120) days to process the initial RESRAM application.

COMMENT #39: Paragraph (6)(A)3.: Ameren commented that interest should be applied, equal to the utility's short-term borrowing rate, to any RES rate recovery deferred pursuant to the RRI cap.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Ameren's comment that interest should also be applied to those costs being carried forward. Thus, the commission will insert language into paragraph (6)(A)3. to authorize the accrual of interest consistent with other interest provisions in similar cost recovery mechanisms.

COMMENT #40: Notice to customers: The Wind Alliance, Renew Missouri, Mr. Parker, and the UCS suggested removing the requirement for a specific line item on customer bills which informs the customers of the presence and amount of the RESRAM. The Wind Alliance suggested that the current language artificially increases the amount attributable to RES. Renew Missouri advocated deleting the required annual notice as well. Mr. P. J. Wilson testified that it was an unnecessary expense.

Public counsel recommended that, in order to more clearly show customers the effects of the RES, the RESRAM charges should not be re-based and buried in base rates, but instead they should continue to be shown separately on customers' bills. Public counsel recommended eliminating the "re-basing" everywhere it appears in the rule.

RESPONSE: Separate line items are typical for special rate adjustment clauses like the fuel adjustment clause and the purchased gas adjustment clause. And, a special line item is necessary when the rate adjustment occurs outside of the typical rate case. Thus, to be consistent with standard practice and to afford the ratepayers additional information about their electricity costs, the commission will keep the line item and annual notice requirements in the rule.

Also, in keeping with the standard practice of "re-basing" costs from one (1) rate adjustment to the next, the commission will not alter this practice in the rule as public counsel suggests. And, in response to the Wind Alliance, with the "re-basing," the commission does not believe that when this requirement is implemented that the line items will include an incorrect or misleading amount on customer bills. No change was made as a result of these comments.

COMMENT #41: Alternative rate recovery of RES compliance costs: KCPL suggested additional language which would allow an electric utility to defer costs in a regulatory asset account between general rate proceedings. KCPL's language also allows the utility to annually calculate Allowance for Funds Used During Construction (AFUDC) on the balance in that regulatory asset account with prudently-incurred costs to be amortized over a ten (10)-year period.

Public counsel responded that this concept was acceptable, but KCPL's language goes too far and should not be adopted. Public counsel made a recommendation to allow RES compliance costs to be recovered as part of a general rate proceeding and suggested adding that language to paragraph (6)(A)16.

Staff also agreed that the regulatory asset concept is not objectionable. Staff states, however, that the rule should be clear that the RRI cap would still apply to any alternative RES recovery proposals.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and staff that the concept of allowing a regulatory asset account is a good one; however, KCPL's proposed language goes too far into ratemaking treatment. Instead of KCPL's proposal, the commission will add a new subsection (6)(D) to include alternative RES cost recovery language. This language is meant to do the following: 1) make the carrying cost language consistent with the rule's earlier RESRAM carrying cost provisions; 2) remove all language from KCPL's proposal indicating up-front ratemaking treatment of the deferred compliance costs; and 3) state that rate recovery of RES compliance costs under the alternative approach will remain subject to the section (5) RRI cap limitations. The commission also made the change proposed by public counsel.

COMMENT #42: New subparagraph (6)(A)26.C.: KCPL asked the commission to include a new subparagraph requiring that a prudence review not commence until the previous prudence review is completed.

RESPONSE: The commission appreciates how complicated having multiple prudence reviews in progress can be. The current rule requires that the schedule for such reviews be set during the RESRAM rate proceeding which establishes the RESRAM. Thus, the parties will have an opportunity to suggest the schedule of prudence reviews. Because this is a new procedure, and because the commission must make certain of its cases a priority by statute, the commission cannot prescribe the timing of prudence reviews before the implementation of this rule. Once RESRAMs are initiated and the commission has experience with this mechanism, it will be in a better position to determine the timing of prudence reviews. The commission made no changes as a result of this comment.

COMMENT #43: Subsections (6)(B) and (6)(C): MIEC commented that the provisions in the proposed rule allowing the deferral of utility RES costs in excess of the RRI one percent (1%) cap should not be included in the rule. MIEC reasoned that the utilities should not be required or encouraged to add renewable resources under Proposition C above the RRI cap.

The Wind Alliance also wanted to make certain that it is the commission's intent in subsections (6)(B) and (6)(C) to base which track the RESRAM proceeding must follow on a revenue increase amount that includes amounts that would be attributable to nonrenewable energy if not for the RES.

RESPONSE: Subdivision 393.1030.2(4), RSMo, requires the commission to provide for recovery of the utilities' prudent costs of complying with the RES. Thus, the commission has made a provision for the recovery of all those costs. It is reasonable to assume that the early costs of compliance may be greater than the later costs because of the initial cost of providing for renewable generation and the increased cost of RECs and renewable energy in a new market. Therefore, the commission determines that it is appropriate to allow the utilities to carry forward prudent compliance costs in this manner. The commission is also clear in its intent on which figures to base the track for the RESRAM proceeding. The commission made no change as a result of these comments.

COMMENT #44: Additional explanations: Staff recommended that a complete explanation of all of the costs, both capital and expense, incurred for RES compliance, and the specific account for each item be included in the filing for a RESRAM. Staff stated that this information will be necessary because of the expedited nature of the recovery mechanisms.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that because of the expedited nature of these proceedings, the utilities should provide as much information up-front as can reasonably be provided. Therefore, the commission will add the requirement suggested by staff to paragraph (6)(B)5., by adding a new subparagraph (6)(B)5.A. and re-lettering the following subparagraphs. The commission will also add this requirement as suggested as a new subparagraph (6)(C)2.E., for the same reason and re-letter accordingly.

COMMENT #45: New subparagraph (6)(B)5.G.: Staff commented that utilities should be required to update the depreciation reserve regarding any prior renewable investment included in rates through the RESRAM process when a new RESRAM application has been made. Staff suggested a new subparagraph to accomplish this. The public counsel supports this addition.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds staff's suggestion to be a reasonable one that will aid in determining an accurate RESRAM in subsequent filings. Thus the commission will add a new subparagraph (6)(B)5.G. and new part (6)(C)3.A.(VII). In addition, the commission will re-letter the following subparagraphs and renumber the part accordingly.

COMMENT #46: Subsections (6)(B) and (6)(C): MEDA commented that the RESRAM approach under subsection (6)(B) is sufficient to reasonably address all RESRAM adjustments and that the process under subsection (6)(C) should be eliminated because it is unduly burdensome. Public counsel recommended that the process under subsection (6)(C) should be used for all proceedings. Public counsel reasons that since the RESRAM is limited to once per calendar year, there should be no need for the expedited procedure. Public counsel also suggests that if the commission keeps the different mechanisms for different recovery percentages, the commission should extend the time the commission has to make a decision in paragraphs (6)(B)3. and (6)(C)1. KCPL suggested that the commission should establish a time limit for its decision. Mr. Robertson on behalf of Renew Missouri filed comments stating that subsections (6)(B) and (6)(C) should provide for an expedited procedure if the RESRAM is filed again after being rejected.
RESPONSE AND EXPLANATION OF CHANGE: The process set forth in subdivision 393.1030.2(4), RSMo, contemplates a recovery mechanism which will make sure that the utilities are recovering their costs of compliance with the RES and that customers are receiving any benefits. During the working docket, EW-2009-0324, the procedure in the rule as proposed was put forth as one (1) mechanism to accomplish this. The rule as proposed contains elements of some of the current cost recovery mechanisms set out in other commission rules (for example, the infrastructure replacement surcharge, the fuel adjustment clause, and the environmental cost recovery mechanism). The commission determines that the current requirements of the rule strike a balance between expediting the recovery of costs for the utilities and ensuring a fair and accurate calculation in a short time period. Further the commission determines that the process will not be unduly burdensome.

Public counsel's suggestions about the commission's time limits are well taken. The subsection (6)(B) proceeding, however, is meant to be an expedited proceeding and the commission will leave the time limits for its decision as it is written. The subsection (6)(C) proceeding is intended to be a more thorough proceeding and thus no time limit was set for a commission decision. Because no specific time was set, the time need not be lengthened beyond the thirty (30)-day minimum in the proposed rule. But because subsection (6)(C) is meant to be a more thorough evaluation, the commission will make the suggested change as proposed by public counsel to ensure that there is time for a hearing on any issues and an adequate effective date of any order and will not make the change proposed by KCPL which does not give sufficient time for those items.

COMMENT #47: General comments to section (7): The Wind Alliance commented that the commission should keep the RES compliance plan process as transparent as possible without designating too much material as highly confidential. The Wind Alliance stated that this was especially necessary if an investor-owned utility was claiming that it cannot meet the RES percentages without hitting the RRI cap. Staff commented that clarification was needed at the beginning of section (7) to set a date for the first RES compliance year. Staff also commented that part (7)(A)1.I.(V) contained an incorrect reference. KCPL made suggestions for minor clarifications and language edits.
RESPONSE AND EXPLANATION OF CHANGE: The commission has worked hard to include as many stakeholders as possible in the process of creating this rule beginning with workshops and including the comments and hearing in the official rulemaking process. Numerous safeguards were put in place to ensure that the process of meeting the RES requirements is open to public scrutiny. No specific changes were suggested by the Wind Alliance, and the commission made no changes to the proposed rule as a result of this comment.

The commission agrees with staff that clarification is needed and will adopt the proposed language provided by staff to include an April 15, 2012, filing deadline for information in the first compliance year. The commission will also correct the reference in part (7)(A)1.I.(V) so that it cites to part (7)(A)1.I.(IV).

The commission agrees with some of the changes which KCPL has suggested and will make the following changes for clarification purposes: inserting "RES" before "Compliance Report" in section (7) and subsection (7)(B); substituting "a" for "an annual" in section (7); inserting the words "as defined by" before the statute citation in subparagraph (7)(A)1.C.; inserting "and RES compliance plan" in subsection (7)(E); and inserting the word "annual" in subsection (7)(D).

The commission will not delete the words "compliance plan" from subparagraph (7)(A)1.M. because that would change the meaning of that subparagraph. KCPL also recommended deleting part (7)(A)1.I.(V) but gave no explanation as to why that requirement should be deleted. Therefore, the commission will make no change as the result of those comments.

COMMENT #48: Preapproval: KCPL proposed language for a new subsection (1)(I) and a new subsection (7)(B). KCPL argued that the rule requires that the rate impact cap be considered in the context of a rate increase request but the analysis is to be performed on a prospective basis. KCPL believed this is inherently inconsistent since rate proceedings are typically based on an historic test year. To overcome this inconsistency, KCPL recommended language allowing the utility to seek a determination from the commission of the appropriateness of a renewable energy resource prior to committing to construct or enter into a contract for that resource. MEDA and Ameren also requested that the rule be amended to allow preapproval of a renewable generating asset or a purchased power agreement for a renewable generator. Mr. Prost also testified that it was important to do a cost-benefit analysis and get preapproval from the commission to determine where renewable generation would be built.

Mr. Kind noted at the hearing that throughout the lengthy process of workshops and prior to the publishing of the rule, the companies made no mention of a preapproval concept. Mr. Kind also stated that this type of process does not belong in the RES rule and that the proposed language with an accelerated process was inappropriate. Mr. Dottheim for staff echoed Mr. Kind's statement that this preapproval concept was not discussed in the RES workshops. Mr. Dottheim stated that a similar concept has been discussed in the Chapter 22 workshops and that this proposed expedited procedure is a concern.
RESPONSE: The commission agrees with the comments of counsel

for staff and with Mr. Kind. The expedited procedure proposed by KCPL for preapproval has not been previously discussed during the commission workshops leading up to this rule, nor given an opportunity for much study since that time. In addition, the commission has not traditionally expressed preapproval for ratemaking treatment of specific projects. The companies undergo an extensive planning process during the IRP process and 4 CSR 240-20 rules are currently in the process of being rewritten. It is more appropriate to provide for a preapproval process in the context of those rules, rather than to have one (1) process for renewable energy generation and a separate process for other types of generation. The commission will make no change as a result of these comments.

COMMENT #49: Subparagraph (7)(B)1.G.: Ameren and KCPL requested that the requirement in subparagraph (7)(B)1.G. be eliminated. The utilities stated that they will have no ability to verify these resources and the commission should not require them to do so. In addition, KCPL stated that this requirement will be addressed in rules to be promulgated by the Department of Natural Resources and would, therefore, be redundant.
RESPONSE AND EXPLANATION OF CHANGE: Subparagraph (7)(B)1.G. requires, as part of the compliance plan, that the utilities verify that they have complied with the requirements of the statute and any Department of Natural Resources rule. To the commission's knowledge, the Department of Natural Resources has not yet begun its formal rulemaking to implement the provisions of subsection 393.1030.4, RSMo. Thus, the commission will leave this requirement in its rule. But to clarify the rule the commission will restate the requirement so that it is clear the utilities need only verify that they have complied with the applicable statute and the Department of Natural Resources regulations.

COMMENT #50: Section (8): KCPL and Ameren requested that the rule be amended to include a calculation for the market value of RECs in advance of the compliance periods established in section (7) of the rule. MEDA also made a similar request. The utilities stated that without knowing the value of the RECs and S-RECS, they cannot determine what mitigation efforts are reasonable or properly assess their financial exposure. Ameren and KCPL suggested that the rule should require staff to recommend a market value for RECs and S-RECs, and for the commission to adopt a market value for RECs and S-RECs prior to each year. KCPL suggested adding the following language to the end of the initial paragraph in section (8): "The average market value for RECs associated with these provisions to be calculated and published by the commission staff in advance of the compliance periods established in section (7) of this rule."

The UCS also suggested that the commission revise the penalty section to provide clear guidance for what penalties will be. The UCS stated that the uncertainty is bad for investments.

Ameren also commented that the commission has no authority to assess penalties and that the rule should be amended to require the commission to pursue penalties in circuit court, similar to other penalty actions.
RESPONSE AND EXPLANATION OF CHANGE: Subdivision 393.1030.2(2), RSMo, requires the commission to make rules which include "penalties of at least twice the average market value of renewable energy credits for the compliance period for failure to meet the targets of subsection 1." This provision is basically restated in section (8) of the proposed rule. The commission cannot publish the market value as the utilities request. To do so requires the commission to make an order of general applicability, which requires an additional rulemaking. (section 536.010(6), RSMo.) In order to complete a rulemaking prior to the compliance period, the commission would need to begin six to eight (6–8) months ahead of the compliance period. The plain language of the statute requires that the penalties be based on the compliance period in which the violation occurs. The commission cannot know the "average market value . . . for the compliance period" before the compliance period.

The statutory language only gives the commission the authority to set the multiplier for the penalties, as the commission has done in section (8), and to make other rules necessary to implement the RES. Thus, the commission will not make the changes as recommended by the utilities, MEDA, and the UCS.

The commission will however, revise section (8) to clarify the procedure for calculating the market value. As the rule is currently written, it has staff making a "determination" and allows the commission to set a procedural schedule, but it is unclear what the procedural schedule would accomplish. The commission will add a new subsection (8)(A) to make it clear that any alleged violation of the RES should be filed as a complaint before the commission similar to any other violation of Chapter 393, RSMo, and that it is not the commission which assesses the penalties, but rather the court. The commission will also revise subsection (8)(C) to clarify that the staff shall make a recommendation as to the average market value for the compliance period and then, after an opportunity for comment, the commission will determine the average market value for the compliance period. The commission also re-letters the subsections as necessary.

COMMENT #51: Subsection (8)(A): Vote Solar recommended adding a definition of items which are considered "reasonable mitigation" including renewable energy credit solicitations, REC banking, and long term contracts.
RESPONSE: Section 393.1030, RSMo, requires the commission to excuse compliance for "events . . . that could not have been reasonably mitigated." The commission will not include examples of "reasonable mitigation" because that is too speculative. It is not foreseeable that energy credit solicitations, REC banking, and long term contracts will be "reasonable" in every circumstance. Thus, the commission makes no change as a result of this comment.

COMMENT #52: Subparagraph (8)(B)2.: KCPL requested that the commission add provisions to the rule to require the Department of Natural Resources to file an annual report showing the department's utilization of any penalty funds received. Staff commented that the Department of Natural Resources has reorganized and now the appropriate entity is the "division of energy" instead of the "energy center" as stated in the proposed rule.
RESPONSE AND EXPLANATION OF CHANGE: The commission has no statutory authority to require the Department of Natural Resources to file the reports requested by KCPL. Therefore, the commission will not make any change as a result of this comment. The "energy center" is the name used in the statute and the commission is reluctant to change it to another specific title. Therefore, the commission will simply revise paragraph (8)(B)2. to refer only to the Department of Natural Resources and not to any specific division within the department.

COMMENT #53: References to sections 392.1045 and 393.1050, RSMo: Steve Reed, general counsel to the commission, filed written comments regarding pending litigation in Cole County Circuit Court Case No. 10AC-CC00179. Mr. Reed stated that the plaintiffs seek a declaratory judgment regarding the validity of section 393.1050, RSMo. Mr. Reed advises the commission to delete section (9) of the proposed rule which restates section 392.1050, RSMo. Mr. Reed argues that if the statute is valid it will control any utility exemptions and the rule will not be necessary; if the statute is determined invalid, having the section deleted will avoid confusion.

Mr. Dottheim on behalf of staff commented that staff agrees with Mr. Reed and recommends section (9) be deleted. Staff also states that this litigation may indirectly affect the validity of sections 393.1040 and 393.1045, RSMo. Staff recommends that the commission delete the references to section 393.1045, RSMo, found in sections (6) and (11) of the proposed rule. Staff also commented specifically that the references in subsection (11)(C) should be replaced with "Proposition C, adopted by initiative, November 4, 2008."

Mr. Wilson on behalf of Renew Missouri, Mr. Werner, and Mr. Fairbank for Alternative Energy Company also suggested that the references to sections 393.1045 and 393.1050, RSMo, and that section (9) be deleted. MOSEIA and the other advocates for the solar industry, including Nathan Jones of Power Source Solar, also commented in writing and at the hearing that the exemption in section (9) was already hurting solar business in the Empire service area and was contrary to the intent of Proposition C.

Mr. Mitten on behalf of Empire testified at the hearing that until a court declares section 393.1050, RSMo, invalid, the exemption in section (9) should remain in the rule.

RESPONSE AND EXPLANATION OF CHANGE: Regardless of the outcome of the litigation involving the validity of section 393.1050, RSMo, deleting section (9) of the proposed rule will do no harm. If the statute is valid, then the exemption will apply regardless of the regulation and the commission can amend the rule at a later date to clarify it if necessary. Therefore, the commission determines that section (9) should be deleted. Sections (10) and (11) will be renumbered accordingly.

After reviewing the references to the statutes in controversy, the commission determines that the reference to section 393.1045, RSMo, in section (6) is unnecessary. In addition, the commission determines that the phrase "Pursuant to this rule and sections 393.1030 and 393.1045, RSMo," is superfluous and will be deleted. The first letter of the remaining sentence will be capitalized. In addition, the commission will delete the specific references to the statutory sections in paragraphs (6)(B)2. and (6)(C)1. and replace them with the general phrase "the statutes governing the RES."

The commission has determined above that subsection (11)(C) may create a conflict with other portions of the rules and subsection (11)(C) should be deleted. The commission also determines that subsection (11)(C) is not necessary because the statutes do not authorize the commission to waive any of their specific provisions. For these reasons, the commission is deleting subsection (11)(C).

OTHER CHANGE NOT AS A RESULT OF THE COMMENTS: While reviewing the proposed rule, the commission discovered a typographical error in paragraph (6)(A)11.

EXPLANATION OF CHANGE: The commission will correct the reference in paragraph (6)(A)11. from subparagraph (6)(A)28.A., which does not exist, to subparagraph (6)(A)26.A.

EXPLANATION OF REVISED ORDER OF RULEMAKING: This rule has been the subject of a hearing at the Joint Committee on Administrative Rules. That hearing remains ongoing and will reconvene on this date, July 1, 2010, after the commission has taken its action to revise this order of rulemaking. Because of the concerns and substantial comments made as a part of that hearing process, the commission is amending this order of rulemaking to make the standard offer contract discretionary, to change the retail rate impact calculation from a ten (10)-year incremental to a ten (10)-year cumulative methodology, and to clarify the penalty language.

4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements

(1) Definitions. For the purpose of this rule—

(A) Calendar year means a period of three hundred sixty-five (365) days (or three hundred sixty-six (366) days for leap years) that includes January 1 of the year and all subsequent days through and including December 31 of the same year;

(B) Co-fire means simultaneously using multiple fuels in a single generating unit to produce electricity;

(C) Commission means the Public Service Commission of the state of Missouri;

(D) Customer-generator means the owner, lessee, or operator of an electric energy generation unit that meets all of the following criteria:

1. Is powered by a renewable energy resource;

2. Is located on premises that are owned, operated, leased, or otherwise controlled by the party as retail account holder and which corresponds to the service address for the retail account;

3. Is interconnected and operates in parallel phase and synchronization with an electric utility and has been approved for interconnection by said electric utility; and

4. Meets all applicable safety, performance, interconnection, and reliability standards endorsed by the net metering rule, 4 CSR 240-20.065(1)(C)6. and 4 CSR 240-20.065(1)(C)7.

(J) REC, Renewable Energy Credit, or Renewable Energy Certificate means a tradable certificate, that is either certified by an entity approved as an acceptable authority by the commission or as validated through the commission's approved REC tracking system or a generator's attestation. Regardless of whether RECs have been certified, RECs must be validated through an attestation signed by an authorized individual of the company owning the renewable energy resource. Such attestation shall contain the name and address of the generator, the type of renewable energy resource technology, and the time and date of the generation. An REC represents that one (1) megawatt-hour of electricity has been generated from renewable energy resources. RECs include, but are not limited to, solar renewable energy credits. An REC expires three (3) years from the date the electricity associated with that REC was generated;

(K) Renewable energy resource(s) means electric energy produced from the following:

1. Wind;

2. Solar, including solar thermal sources utilized to generate electricity, photovoltaic cells, or photovoltaic panels;

3. Dedicated crops grown for energy production;

4. Cellulosic agricultural residues;

5. Plant residues;

6. Methane from landfills or wastewater treatment;

7. Clean and untreated wood, such as pallets;

8. Hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has generator nameplate ratings of ten (10) megawatts or less;

9. Fuel cells using hydrogen produced by any of the renewable energy technologies in paragraphs 1. through 8. of this subsection; and

10. Other sources of energy not including nuclear that become available after November 4, 2008, and are certified as renewable by rule by the department;

(P) The RES revenue requirement means the following:

1. All expensed RES compliance costs (other than taxes and depreciation associated with capital projects) that are included in the electric utility's revenue requirement in the proceeding in which the RESRAM is established, continued, modified, or discontinued; and

2. The costs (i.e., the return, taxes, and depreciation) of any capital projects whose primary purpose is to permit the electric utility to comply with any RES requirement. The costs of such capital projects shall be those identified on the electric utility's books and records as of the last day of the test year, as updated, utilized in the proceeding in which the RESRAM is established, continued, modified, or discontinued;

(Q) Solar renewable energy credit or S-REC means an REC created by generation of electric energy from solar thermal sources, photovoltaic cells, and photovoltaic panels;

(R) Staff means all commission employees, except the secretary to the commission, general counsel, technical advisory staff as defined by section 386.135 RSMo, hearing officer, or administrative or regulatory law judge;

(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 S-RECs associated with electricity from renewable energy resources in sufficient quantity to meet both the RES requirements and RES solar energy requirements respectively on a

calendar year basis. Utility renewable energy resources utilized for compliance with this rule must include the RECs or S-RECs associated with the generation. The RES requirements and the RES solar energy requirements are based on total retail electric sales of the electric utility. The requirements set forth in this rule shall not preclude an electric utility from being able to prudently invest and recover all prudently incurred costs in renewable energy resources that exceed the requirements or limits of this rule and are consistent with the prudent implementation of any resource acquisition strategy developed in compliance with 4 CSR 240-22, Electric Utility Resource Planning. RECs or S-RECs produced from these additional renewable energy resources shall be eligible to be counted toward the RES requirements.

(A) *Reserved**

(B) The amount of renewable energy resources or RECs associated with renewable energy resources that can be counted towards meeting the RES requirements are as follows:

1. If the facility generating the renewable energy resources is located in Missouri, the allowed amount is the amount of megawatt-hours generated by the applicable generating facility, further subject to the additional twenty-five hundredths (0.25) credit pursuant to subsection (3)(G) of this rule; and

2. *Reserved**

3. RECs created by the operation of customer-generator facilities and acquired by 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.

(G) If an electric utility intends to accept proposals for renewable energy resources to be owned by the electric utility or an affiliate of the electric utility, it shall comply with the necessary requirements of 4 CSR 240-20.015, Affiliate Transactions.

(3) Renewable Energy Credits. Subject to the requirements of section (2) of this rule, RECs and S-RECs shall be utilized to satisfy the RES requirements of this rule. S-RECs shall be utilized to comply with the RES solar energy requirements. S-RECs may also be utilized to satisfy the non-solar RES requirements.

(A) The REC or S-REC creation is linked to the associated renewable energy resource. For purposes of retaining RECs or S-RECs, the utility, person, or entity responsible for creation of the REC or S-REC must maintain verifiable records including generator attestation that prove the creation date. The electric utility shall comply with the requirement of this subsection through the registration of the REC in the commission's approved REC tracking system.

(C) RECs or S-RECs associated with customer-generated net-metered renewable energy resources shall be owned by the customer-generator. All contracts between electric utilities and the owners of net-metered generation sources entered into after the effective date of these rules shall clearly specify the entity or person who shall own the RECs or S-RECs associated with the energy generated by the net-metered generation source. Electric metering associated with net-metered sources shall meet the meter accuracy and testing requirements of 4 CSR 240-10.030, Standards of Quality. For solar electric systems utilizing the provisions of subsection (4)(H) of this rule, no meter accuracy or testing requirements are required.

(F) All electric utilities shall use a commission designated common central third-party registry for REC accounting for RES requirements, unless otherwise ordered for good cause shown.

(G) RECs that are created by the generation of electricity by a renewable energy resource physically located in the state of Missouri shall count as one and twenty-five hundredths (1.25) RECs for purposes of compliance with this rule. This additional credit shall not be tracked in the tracking systems specified in subsection (F) of this section. This additional credit of twenty-five hundredths (0.25) shall be recognized when the electric utility files its annual compliance report in accordance with section (7) of this rule.

(H) RECs that are purchased by an electric utility from a facility that subsequently fails to meet the requirements for renewable energy resources shall continue to be valid through the date of facility decertification.

(I) Electric utilities required to comply with this rule may purchase or sell RECs, either bilaterally or in any open market system, inside or outside the state, without prior commission approval.

(J) For compliance purposes, utilities shall retire RECs in sufficient quantities to meet the requirements of this rule. The RECs shall be retired during the calendar year for which compliance is being achieved. Utilities may retire RECs during the months of January, February, or March following the calendar year for which compliance is being achieved and designate those retired RECs as counting towards the requirements of that previous calendar year. Any RECs retired in this manner shall be specifically annotated in the registry designated in accordance with subsection (F) of this section and the annual compliance report filed in accordance with section (7) of this rule. RECs retired in January, February, or March to be counted towards compliance for the previous calendar year in accordance with this subsection shall not exceed ten percent (10%) of the total RECs necessary to be retired for compliance for that calendar year.

(K) RECs may be aggregated with other RECs and utilized for compliance purposes. RECs shall be issued in whole increments. Any fractional RECs, aggregated or non-aggregated, remaining after certificate issuance will be carried forward to the next reporting period for the specific facility(ies). REC aggregation may be performed by electric utilities, customer-generators, or other parties.

(4) Solar Rebate. Pursuant to section 393.1030, RSMo, and this rule, electric utilities shall include in their tariffs a provision regarding retail account holder rebates for solar electric systems. These rebates shall be available to Missouri electric utility retail account holders who install new or expanded solar electric systems that become operational after December 31, 2009. The minimum amount of the rebate shall be two dollars ($2.00) per installed watt up to a maximum of twenty-five (25) kW per retail account. To qualify for the solar rebate and the Standard Offer Contract of subsection (H) of this section, the customer-owned or leased solar generating equipment shall be interconnected with the electric utility's system.

(B) The solar electric system must be permanently installed on the account holder's premises. As installed, the solar electric system shall be situated in a location where a minimum of eighty-five percent (85%) of the solar resource is available to the system as verified by the customer or the customer's installer at the time of installation.

(D) Solar electric systems installed by retail account holders must consist of equipment that is commercially available and factory new when installed on the original account holder's premises, and the principal system components (i.e., photovoltaic modules and inverters) shall be covered by a functional warranty from the manufacturer for a minimum period of ten (10) years, unless determined otherwise by the commission, with the exception of solar battery components. Rebuilt, used, or refurbished equipment is not eligible to receive the rebate. For any applicable retail account, rebates shall be limited to twenty-five (25) kW. Retail accounts which have been awarded rebates for an aggregate of less than twenty-five (25) kW shall qualify to apply for rebates for system expansions up to an aggregate of twenty-five (25) kW. Systems greater than twenty-five (25) kW but less than one hundred (100) kW in size shall be eligible for a solar rebate up to the twenty-five (25) kW limit of this section.

(E) The solar electric system shall meet all requirements of 4 CSR 240-20.065, Net Metering, or a tariff approved by the commission for customer-owned generation.

(H) Standard Offer Contracts.

1. The electric utility may at the utility's discretion, offer a standard contract for the purchase of S-RECs created by the customer's

installed solar electric system.

2. If the electric utility chooses to offer a standard offer contract, the electric utility shall file tariff sheets detailing the provision of the contract no later than November 1 each year for the following compliance year. Workpapers documenting the purchase prices shall be submitted with the tariff filing.

3. No customer is required by this rule to sell any or all S-RECs to the electric utility.

(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.

(K) The electric utility shall provide a rebate offer for solar rebates within thirty (30) days of application and shall provide the solar rebate payment to qualified retail account holders within thirty (30) days of verification that the solar electric system is fully operational. Applicants who have received a solar rebate offer shall have up to twelve (12) months from the date of receipt of a rebate offer to demonstrate full operation of their proposed solar electric system. Full operation means the purchase and installation on the retail account holder's premises of all major system components of the on-site solar electric system and production of rated electrical generation. If full operation is not achieved within six (6) months of acceptance of the Standard Offer Contract or rebate offer, in order to keep eligibility for the rebate offer and/or the Standard Offer Contract, the applicant shall file a report with the electric utility demonstrating substantial project progress and indicating continued interest in the rebate. The six (6)-month report shall include proof of purchase of the majority of the solar electric system components, partial system construction, and building permit if required by the jurisdictional authority. Customers who do not demonstrate substantial progress within six (6) months of receipt of the rebate offer, or achieve full operation within one (1) year of receipt of rebate offer, will be required to reapply for any solar rebate.

(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. Calculations of the expected value of costs associated with greenhouse gas emissions shall be derived by applying the probability of the occurrence of future greenhouse gas regulations to expected level(s) of costs per ton associated with those regulations over the next ten (10) years. Any variables utilized in the modeling shall be consistent with values established in prior rate proceedings, electric utility resource planning filings, or RES compliance plans, unless specific justification is provided for deviations. The comparison of the rate impact of renewable and non-renewable energy resources shall be conducted only when the electric utility proposes to add incremental renewable energy resource generation directly attributable to RES compliance through the procurement or development of 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.

(6) Cost Recovery and Pass-through of Benefits. An electric utility outside or in a general rate proceeding may file an application and rate schedules with the commission to establish, continue, modify, or discontinue a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) that shall allow for the adjustment of its rates and charges to provide for recovery of prudently incurred costs or pass-through of benefits received as a result of compliance with RES requirements; provided that the RES compliance retail rate impact on average retail customer rates does not exceed one percent (1%) as determined by section (5) of this rule. In all RESRAM applications, the increase in electric utility revenue requirements shall be calculated as the amount of additional RES compliance costs incurred since the electric utility's last RESRAM application or general rate proceeding, net of any reduction in RES compliance costs included in the electric utility's prior RESRAM application or general rate case, and any new RES compliance benefits.

(A) If the actual increase in utility revenue requirements is less than two percent (2%), subsection (B) of this section shall be utilized. If the actual increase in utility revenue requirements is equal to or greater than two percent (2%), subsection (C) of this section shall be utilized. For the initial filing by the electric utility in accordance with this section, subsection (C) of this section shall be utilized, except that the staff, and individuals or entities granted intervention by the commission, may file a report or comments no later than one hundred twenty (120) days after the electric utility files its application and rate schedules to establish an RESRAM.

1. The pass-through of benefits has no single-year cap or limit.

2. Any party in a rate proceeding in which an RESRAM is in

effect or proposed may seek to continue as is, modify, or oppose the RESRAM. The commission shall approve, modify, or reject such applications and rate schedules to establish an RESRAM only after providing the opportunity for an evidentiary hearing.

3. If the electric utility incurs costs in complying with the RES requirements that exceed the one percent (1%) limit determined in accordance with section (5) of this rule for any year, those excess costs may be carried forward to future years for cost recovery under this rule. Any costs carried forward shall have a carrying cost applied to them monthly equal to the electric utility's cost of short-term borrowing rate. These carried forward costs plus accrued carrying costs plus additional annual costs remain subject to the one percent (1%) limit for any subsequent years. In any calendar year that costs from a previous compliance year are carried forward, the carried forward costs will be considered for cost recovery prior to any new costs for the current calendar year.

4. For ownership investments in eligible renewable energy technologies in an RESRAM application, the electric utility shall be entitled to a rate of return equal to the electric utility's most recent authorized rate of return on rate base. Recovery of the rate of return for investment in renewable energy technologies in an RESRAM application is subject to the one percent (1%) limit specified in section (5) of this rule.

5. Upon the filing of proposed rate schedules with the commission seeking to recover costs or pass-through benefits of RES compliance, the commission will provide general notice of the filing.

6. The electric utility shall provide the following notices to its customers, with such notices to be approved by the commission in accordance with paragraph 7. of this subsection before the notices are sent to customers:

A. An initial, one (1)-time notice to all potentially affected customers, such notice being sent to customers no later than when customers will receive their first bill that includes an RESRAM, explaining the utility's RES compliance and identifying the statutory authority under which it is implementing an RESRAM;

B. An annual notice to affected customers each year that an RESRAM is in effect explaining the continuation of its RESRAM and RES compliance; and

C. An RESRAM line item on all customer bills, which informs the customers of the presence and amount of the RESRAM.

7. Along with the electric utility's filing of proposed rate schedules to establish an RESRAM, the utility shall file the following items with the commission for approval or rejection, and the Office of the Public Counsel (OPC) may, within ten (10) days of the utility's filing of this information, submit comments regarding these notices to the commission:

A. An example of the notice required by subparagraph (A)6.A. of this section;

B. An example of the notice required by subparagraph (A)6.B. of this section; and

C. An example customer bill showing how the RESRAM will be described on affected customers' bills in accordance with subparagraph (A)6.C. of this section.

8. An electric utility may effectuate a change in RESRAM no more often than one (1) time during any calendar year, not including changes as a result of paragraph 11. of this subsection.

9. Submission of Surveillance Monitoring Reports. Each electric utility with an approved RESRAM shall submit to staff, OPC, and parties approved by the commission a Surveillance Monitoring Report. The form of the Surveillance Monitoring Report is included herein.

A. The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the RESRAM.

B. If the electric utility also has an approved fuel rate adjustment mechanism or environmental cost recovery mechanism (ECRM), the electric utility shall submit a single Surveillance Monitoring Report for the RESRAM, ECRM, the fuel rate adjustment mechanism, or any combination of the three (3). The electric utility shall designate on the single Surveillance Monitoring Report whether the submission is for RESRAM, ECRM, fuel rate adjustment mechanism, or any combination of the three (3).

C. Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in this paragraph, after notice and an opportunity for a hearing, the commission may suspend an RESRAM or order other appropriate remedies as provided by law.

10. The RESRAM will be calculated as a percentage of the customer's energy charge for the applicable billing period.

11. Commission approval of proposed rate schedules, to establish or modify an RESRAM, shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to RES compliance costs during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of RES compliance costs previously in an RESRAM, or pass-through of benefits previously in an RESRAM, the electric utility shall offset its RESRAM in the future as necessary to recognize and account for any such costs or benefits. The offset amount shall include a calculation of interest at the electric utility's short-term borrowing rate as calculated in subparagraph (A)26.A. of this section. The RESRAM offset will be designed to reconcile such disallowed costs or benefits within the six (6)-month period immediately subsequent to any commission order regarding such disallowance.

12. At the end of each twelve (12)-month period that an RESRAM is in effect, the electric utility shall reconcile the differences between the revenues resulting from the RESRAM and the pretax revenues as found by the commission for that period and shall submit the reconciliation to the commission with its next sequential proposed rate schedules for RESRAM continuation or modification.

13. An electric utility that has implemented an RESRAM shall file revised RESRAM rate schedules to reset the RESRAM to zero (0) when new base rates and charges become effective following a commission report and order establishing customer rates in a general rate proceeding that incorporates RES compliance costs or benefits previously reflected in an RESRAM in the utility's base rates. If an over- or under-recovery of RESRAM revenues or over- or under-pass-through of RESRAM benefits exists after the RESRAM has been reset to zero (0), that amount of over- or under-recovery, or over- or under-pass-through, shall be tracked in an account and considered in the next RESRAM filing of the electric utility.

14. Upon the inclusion of RES compliance cost or benefit pass-through previously reflected in an RESRAM into an electric utility's base rates, the utility shall immediately thereafter reconcile any previously unreconciled RESRAM revenues or RESRAM benefits and track them as necessary to ensure that revenues or pass-through benefits resulting from the RESRAM match, as closely as possible, the appropriate pretax revenues or pass-through benefits as found by the commission for that period.

15. In addition to the information required by subsection (B) or (C) of this section, the electric utility shall also provide the following information when it files proposed rate schedules with the commission seeking to establish, modify, or reconcile an RESRAM:

A. A description of all information posted on the utility's website regarding the RESRAM; and

B. A description of all instructions provided to personnel at the utility's call center regarding how those personnel should respond to calls pertaining to the RESRAM.

16. RES compliance costs shall only be recovered through an RESRAM or as part of a general rate proceeding and shall not be considered for cost recovery through an environmental cost recovery

mechanism or fuel adjustment clause or interim energy charge.

17. Pre-existing adjustment mechanisms, tariffs, and regulatory plans. The provisions of this rule shall not affect—

A. Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

B. Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

18. Each electric utility with an RESRAM shall submit, with an affidavit attesting to the veracity of the information, the following information on a monthly basis to the manager of the auditing department of the commission and the OPC. The information may be submitted to the manager of the auditing department through the electronic filing and information system (EFIS). The following information shall be aggregated by month and supplied no later than sixty (60) days after the end of each month when the RESRAM is in effect. The first submission shall be made within sixty (60) days after the end of the first complete month after the RESRAM goes into effect. It shall contain, at a minimum—

A. The revenues billed pursuant to the RESRAM by rate class and voltage level, as applicable;

B. The revenues billed through the electric utility's base rate allowance by rate class and voltage level;

C. All significant factors that have affected the level of RESRAM revenues along with workpapers documenting these significant factors;

D. The difference, by rate class and voltage level, as applicable, between the total billed RESRAM revenues and the projected RESRAM revenues;

E. Any additional information ordered by the commission to be provided; and

F. To the extent any of the requested information outlined above is provided in response to another section, the information only needs to be provided once.

19. Information required to be filed with the commission or submitted to the manager of the auditing department of the commission and to OPC in this section shall also be, in the same format, served on or submitted to any party to the related rate proceeding in which the RESRAM was approved by the commission, periodic adjustment proceeding, prudence review, or general rate case to modify, continue, or discontinue the same RESRAM, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

20. A person or entity granted intervention in a rate proceeding in which an RESRAM is approved by the commission shall be a party to any subsequent related periodic adjustment proceeding or prudence review, without the necessity of applying to the commission for intervention. In any subsequent general rate proceeding, such person or entity must seek and be granted status as an intervenor to be a party to that case. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic adjustment proceeding, prudence review, or general rate case to modify, continue, or discontinue the same RESRAM shall be served on or submitted to all parties from the prior related rate proceeding and on all parties from any subsequent related periodic adjustment proceeding, prudence review, or general rate case to modify, continue, or discontinue the same RESRAM, concurrently with filing the same with the commission or submitting the same to the manager of the auditing department of the commission and OPC, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

21. A person or entity not a party to the rate proceeding in which an RESRAM is approved by the commission may timely apply to the commission for intervention, pursuant to sections 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic adjustment proceeding, or prudence review, or, pursuant to sections 4 CSR 240-2.075(1) through (5), respecting any subsequent general rate case to modify, continue, or discontinue the same RESRAM. If no party to a subsequent periodic adjustment proceeding or prudence review objects within ten (10) days of the filing of an application for intervention, the applicant shall be deemed as having been granted intervention without a specific commission order granting intervention, unless, within the above-referenced ten (10)-day period, the commission denies the application for intervention on its own motion. If an objection to the application for intervention is filed on or before the end of the above-referenced ten (10)-day period, the commission shall rule on the application and the objection within ten (10) days of the filing of the objection.

22. The results of discovery from a rate proceeding where the commission may approve, modify, reject, continue, or discontinue an RESRAM, or from any subsequent periodic adjustment proceeding or prudence review relating to the same RESRAM, may be used without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the prior proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

23. If a party which submitted data requests relating to a proposed RESRAM in the rate proceeding where the RESRAM was established or in any subsequent related periodic adjustment proceeding or prudence review wants the responding party to whom the prior data requests were submitted to supplement or update that responding party's prior responses for possible use in a subsequent related periodic adjustment proceeding, prudence review, or general rate case to modify, continue, or discontinue the same RESRAM, the party which previously submitted the data requests shall submit an additional data request to the responding party to whom the data requests were previously submitted which clearly identifies the particular data requests to be supplemented or updated and the particular period to be covered by the updated response. A responding party to a request to supplement or update shall supplement or update a data request response from a related rate proceeding where an RESRAM was established, reviewed for prudence, modified, continued, or discontinued, if the responding party has learned or subsequently learns that the data request response is in some material respect incomplete or incorrect.

24. Each rate proceeding where commission establishment, continuation, modification, or discontinuation of an RESRAM is the sole issue shall comprise a separate case. The same procedures for handling confidential information shall apply, pursuant to 4 CSR 240-2.135, as in the immediately preceding RESRAM case for the particular electric utility, unless otherwise directed by the commission on its own motion or as requested by a party and directed by the commission.

25. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

26. Prudence reviews respecting an RESRAM. A prudence review of the costs subject to the RESRAM shall be conducted no less frequently than at intervals established in the rate proceeding in which the RESRAM is established.

A. All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate. The interest shall be calculated on a monthly basis for each month the RESRAM rate is in effect, equal to the weighted average interest rate paid by the electric utility on short-term debt for that calendar month. This rate shall then be applied to a simple average of the same month's beginning and ending cumulative RESRAM over-collection or under-collection balance. Each month's accumulated interest shall be included in the RESRAM over-collection or under-collection balances on an ongoing basis.

B. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The

staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.

(I) If the staff, OPC, or other party auditing the RESRAM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's RESRAM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information shall timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing time line shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing time line. For good cause shown the commission may further suspend this time line.

(II) If the time line is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate. The interest shall be calculated on a monthly basis in the same manner as described in subparagraph (A)26.A. of this section.

(B) RESRAM for less than two percent (2%) actual increase in utility revenue requirements.

1. When an electric utility files proposed rate schedules pursuant to sections 393.1020 and 393.1030, RSMo, and the provisions of this rule, the commission staff shall conduct an examination of the proposed RESRAM.

2. The staff of the commission shall examine and analyze the information submitted by the electric utility to determine if the proposed RESRAM is in accordance with provisions of this rule and the statutes governing the RES and shall submit a report regarding its examination to the commission not later than sixty (60) days after the electric utility files its proposed rate schedules.

3. The commission may hold a hearing on the proposed rate schedules and shall issue an order to become effective not later than one hundred twenty (120) days after the electric utility files the proposed rate schedules.

4. If the commission finds that the proposed rate schedules or substitute filed rate schedules comply with the applicable requirements, the commission shall enter an order authorizing the electric utility to utilize said RESRAM rate schedules with an appropriate effective date, as determined by the commission.

5. At the time an electric utility files proposed rate schedules with the commission seeking to establish, modify, or reconcile an RESRAM, it shall submit its supporting documentation regarding the calculation of the proposed RESRAM and shall serve the Office of the Public Counsel with a copy of its proposed rate schedules and its supporting documentation. The utility's supporting documentation shall include workpapers showing the calculation of the proposed RESRAM and shall include, at a minimum, the following information:

A. A complete explanation of all of the costs, both capital and expense, incurred for RES compliance that the electric utility is proposing be included in rates and the specific account used for each item;

B. The state, federal, and local income or excise tax rates used in calculating the proposed RESRAM, and an explanation of the source of and the basis for using those tax rates;

C. The regulatory capital structure used in calculating the proposed RESRAM, and an explanation of the source of and the basis for using the capital structure;

D. The cost rates for debt and preferred stock used in calculating the proposed RESRAM, and an explanation of the source of and the basis for using those rates;

E. The cost of common equity used in calculating the proposed RESRAM, and an explanation of the source of and the basis for that equity cost;

F. The depreciation rates used in calculating the proposed RESRAM, and an explanation of the source of and the basis for using those depreciation rates;

G. The rate base used in calculating the proposed RESRAM, including an updated depreciation reserve total incorporating the impact of all RES plant investments previously reflected in general rate proceedings or RESRAM application proceedings initiated following enactment of the RES rules;

H. The applicable customer class billing methodology used in calculating the proposed RESRAM, and an explanation of the source of and basis for using that methodology;

I. An explanation of how the proposed RESRAM is allocated among affected customer classes, if applicable; and

J. For purchase of electrical energy from eligible renewable energy resources bundled with the associated RECs or for the purchase of unbundled RECs, the cost of the purchases, and an explanation of the source of the energy or RECs and the basis for making that specific purchase, including an explanation of the request for proposal (RFP) process, or the reason(s) for not using an RFP process, used to establish which entity provided the energy or RECs associated with the RESRAM.

(C) RESRAM for equal to or greater than two percent (2%) actual increase in utility revenue requirements.

1. If an electric utility files an application and rate schedules to establish, continue, modify, or discontinue an RESRAM outside of a general rate proceeding, the staff shall examine and analyze the information filed in accordance with this section and additional information obtained through discovery, if any, to determine if the proposed RESRAM is in accordance with provisions of this rule and the statutes governing the RES. The commission shall establish a procedural schedule providing for an evidentiary hearing and commission report and order regarding the electric utility's filing. The staff shall submit a report regarding its examination and analysis to the commission not later than seventy-five (75) days after the electric utility files its application and rate schedules to establish an RESRAM. An individual or entity granted intervention by the commission may file comments not later than seventy-five (75) days after the electric utility files its application and rate schedules to establish an RESRAM. The electric utility shall have no less than fifteen (15) days from the filing of the staff's report and any intervener's comments to file a reply. The commission shall have no less than thirty (30) days from the filing of the electric utility's reply to hold a hearing and issue a report and order approving the electric utility's rate schedules subject to or not subject to conditions, rejecting the electric utility's rate schedules, or rejecting the electric utility's rate schedules and authorizing the electric utility to file substitute rate schedules subject to or not subject to conditions.

2. When an electric utility files an application and rate schedules as described in this subsection, the electric utility shall file at the same time supporting direct testimony and the following supporting information as part of, or in addition to, its supporting direct testimony:

A. Proposed RESRAM rate schedules;

B. A general description of the design and intended operation of the proposed RESRAM;

C. A complete description of how the proposed RESRAM is compatible with the requirement for prudence reviews;

D. A complete explanation of all the costs that shall be considered for recovery under the proposed RESRAM and the specific account used for each cost item on the electric utility's books and records;

E. A complete explanation of all of the costs, both capital and expense, incurred for RES compliance that the electric utility is proposing be included in rates and the specific account used for each

cost item on the electric utility's books and records.

F. A complete explanation of all of the costs, both capital and expense, incurred for RES compliance that the electric utility is proposing be included in base rates and the specific account used for each cost item on the electric utility's books and records;

G. A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RESRAM and the specific account where each such revenue item is recorded on the electric utility's books and records;

H. A complete explanation of any feature designed into the proposed RESRAM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed RESRAM;

I. For each of the major categories of costs, that the electric utility seeks to recover through its proposed RESRAM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed RES compliance revenue requirement and any subsequent RESRAM rate adjustments during the term of the proposed RESRAM; and

J. Any additional information that may have been ordered by the commission in a prior rate proceeding to be provided.

3. When an electric utility files rate schedules as described in this subsection, and serves upon parties as provided in paragraph (A)20. of this section, the rate schedules must be accompanied by supporting direct testimony, and at least the following supporting information:

A. The following information shall be included with the filing:

(I) For the period from which historical costs are used to adjust the RESRAM rate:

(a) REC costs differentiated by purchases, swaps, and loans;

(b) Net revenues from REC sales, swaps, and loans;

(c) Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation, or for any other reason;

(d) Base rate component of RES compliance costs and revenues;

(e) Identification of capital projects placed in service that were not anticipated in the previous general rate proceeding; and

(f) Any additional requirements ordered by the commission in the prior rate proceeding;

(II) The levels of RES compliance capital costs and expenses in the base rate revenue requirement from the prior general rate proceeding;

(III) The levels of RES compliance capital cost in the base rate revenue requirement from the prior general rate proceeding as adjusted for the proposed date of the periodic adjustment;

(IV) The capital structure as determined in the prior rate proceeding;

(V) The cost rates for the electric utility's debt and preferred stock as determined in the prior rate proceeding;

(VI) The electric utility's cost of common equity as determined in the prior rate proceeding;

(VII) The rate base used in calculating the proposed RESRAM, including an updated depreciation reserve total incorporating the impact of all RES plant investments previously reflected in general rate proceedings or RESRAM application proceedings initiated following enactment of the RES rules; and

(VIII) Calculation of the proposed RESRAM collection rates; and

B. Work papers supporting all items in subparagraph (C)3.A. of this section shall be submitted to the manager of the auditing department and served upon parties as provided in paragraph (A)20. in this section. The work papers may be submitted to the manager of the auditing department through EFIS.

(D) Alternatively, an electric utility may recover RES compliance costs without use of the RESRAM procedure through rates established in a general rate proceeding. In the interim between general rate proceedings the electric utility may defer the costs in a regulatory asset account, and monthly calculate a carrying charge on the balance in that regulatory asset account equal to its short-term cost of borrowing. All questions pertaining to rate recovery of the RES compliance costs in a subsequent general rate proceeding will be reserved to that proceeding, including the prudence of the costs for which rate recovery is sought and the period of time over which any costs allowed rate recovery will be amortized. Any rate recovery granted to RES compliance costs under this alternative approach will be fully subject to the retail rate impact requirements set forth in section (5) of this rule.

(7) Annual RES Compliance Report and RES Compliance Plan. Each electric utility shall file an RES compliance report no later than April 15 to report on the status of the utility's compliance with the renewable energy standard and the electric utility's compliance plan as described in this section for the most recently completed calendar year. The initial annual RES compliance report shall be filed by April 15, 2012, for the purpose of providing the necessary information for the first RES compliance year (2011). Each electric utility shall file an annual RES compliance plan with the commission. The plan shall be filed no later than April 15 of each year.

(A) Annual RES Compliance Report.

1. The annual RES compliance report shall provide the following information for the most recently completed calendar year for the electric utility:

A. Total retail electric sales for the utility, as defined by this rule;

B. Total jurisdictional revenue from the total retail electric sales to Missouri customers as measured at the customers' meters;

C. Total retail electric sales supplied by renewable energy resources, as defined by section 393.1025(5), RSMo, including the source of the energy;

D. The number of RECs and S-RECs created by electrical energy produced by renewable energy resources owned by the electric utility. For the electrical energy produced by these utility-owned renewable energy resources, the value of the energy created. For the RECs and S-RECs, a calculated REC or S-REC value for each source and each category of REC;

E. The number of RECs acquired, sold, transferred, or retired by the utility during the calendar year;

F. The source of all RECs acquired during the calendar year;

G. The identification, by source and serial number, of any RECs that have been carried forward to a future calendar year;

H. An explanation of how any gains or losses from sale or purchase of RECs for the calendar year have been accounted for in any rate adjustment mechanism that was in effect for the electric utility;

I. For acquisition of electrical energy and/or RECs from a renewable energy resource that is not owned by the electric utility, the following information for each resource that has a rated capacity of ten (10) kW or greater:

(I) Name, address, and owner of the facility;

(II) An affidavit from the owner of the facility certifying that the energy was derived from an eligible renewable energy technology and that the renewable attributes of the energy have not been used to meet the requirements of any other local or state mandate;

(III) The renewable energy technology utilized at the facility;

(IV) The dates and amounts of all payments from the electric utility to the owner of the facility; and

(V) All meter readings used for calculation of the payments referenced in part (IV) of this paragraph;

J. The total number of customers that applied and received a solar rebate in accordance with section (4) of this rule;

K. The total number of customers that were denied a solar

rebate and the reason(s) for denial;

L. The amount of funds expended by the electric utility for solar rebates, including the price and terms of future S-REC contracts associated with the facilities that qualified for the solar rebates;

M. An affidavit documenting the electric utility's compliance with the RES compliance plan as described in this section during the calendar year. This affidavit will include a description of the amount of over- or under-compliance costs that shall be adjusted in the electric utility's next compliance plan; and

N. If compliance was not achieved, an explanation why the electric utility failed to meet the RES.

2. On the same date that the electric utility files its annual RES compliance report, the utility shall post an electronic copy of its annual RES compliance report, excluding highly confidential or proprietary material, on its website to facilitate public access and review.

3. On the same date that the electric utility files its annual RES compliance report, the utility shall provide the commission with separate electronic copies of its annual RES compliance report including and excluding highly confidential and proprietary material. The commission shall place the redacted electronic copies of each electric utility's annual RES compliance reports on the commission's website in order to facilitate public viewing, as appropriate.

(B) RES Compliance Plan.

1. The plan shall cover the current year and the immediately following two (2) calendar years. The RES compliance plan shall include, at a minimum—

A. A specific description of the electric utility's planned actions to comply with the RES;

B. A list of executed contracts to purchase RECs (whether or not bundled with energy), including type of renewable energy resource, expected amount of energy to be delivered, and contract duration and terms;

C. The projected total retail electric sales for each year;

D. Any differences, as a result of RES compliance, from the utility's preferred resource plan as described in the most recent electric utility resource plan filed with the commission in accordance with 4 CSR 240-22, Electric Utility Resource Planning;

E. A detailed analysis providing information necessary to verify that the RES compliance plan is the least cost, prudent methodology to achieve compliance with the RES;

F. A detailed explanation of the calculation of the RES retail impact limit calculated in accordance with section (5) of this rule. This explanation should include the pertinent information for the planning interval which is included in the RES compliance plan; and

G. Verification that the utility has met the requirements for not causing undue adverse air, water, or land use impacts pursuant to subsection 393.1030.4. RSMo, and the regulations of the Department of Natural Resources.

(D) The staff of the commission shall examine each electric utility's annual RES compliance report and RES compliance plan and file a report of its review with the commission within forty-five (45) days of the filing of the annual RES compliance report and RES compliance plan with the commission. The staff's report shall identify any deficiencies in the electric utility's compliance with the RES.

(E) The Office of the Public Counsel and any interested persons or entities may file comments based on their review of the electric utility's annual RES compliance report and RES compliance plan within forty-five (45) days of the electric utility's filing of its compliance report with the commission.

(8) Penalties. An electric utility shall be subject to penalties of at least twice the average market value of RECs or S-RECs for the calendar year for failure to meet the targets of section 393.1030.1, RSMo, and section (2) of this rule.

(A) Any allegation of a failure to comply with the RES requirements shall be filed as a complaint under the statutes and regulations governing complaints.

(B) An electric utility shall be excused if it proves to the commission that failure was due to events beyond its reasonable control that could not have been reasonably mitigated or to the extent that the maximum average retail rate impact increase, as determined in accordance with section (5) of this rule, would be exceeded.

(C) Any penalty payments assessed by the courts shall be remitted to the department. These payments shall be utilized by the department for the following purposes:

1. Purchase RECs or S-RECs in sufficient quantity to offset the shortfall of the utility to meet the RES requirements; and

2. Payments in excess of those required in paragraph (C)1. of this section shall be utilized to provide funding for renewable energy and energy efficiency projects. These projects shall be selected by the Department of Natural Resources in consultation with the staff.

(D) Upon determination by the commission that an electric utility has not complied with the RES, penalty amounts shall be calculated by determining the electric utility's shortfall relative to RES total requirements and RES solar energy requirements for the calendar year. The penalty amount recommended by the commission to the court of jurisdiction shall be twice the average market value during the calendar year for RECs or S-RECs in sufficient quantity to make up the utility's shortfall for RES total requirements or RES solar energy requirements. The average market value for RECs or S-RECs for the calendar year shall be based on RECs and S-RECs utilized for compliance with this rule. A recommended average market value for the compliance period shall be calculated by staff. The Office of the Public Counsel and any interested persons or entities may file comments based on their review of staff's recommendation. The commission may issue an order which establishes a further procedural schedule, or the commission may determine the average market value as part of the complaint proceeding.

(E) Any electric utility that is subject to penalties as prescribed by this section shall not seek recovery of the penalties through section (6) of this rule or any other rate-making activity.

(9) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that an electric utility is earning more than a fair return on equity, nor shall an electric utility be permitted to use the existence of its RESRAM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity.

(10) Waivers and Variances. Upon written application, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of this rule for good cause shown.

(A) The granting of a variance to one (1) electric utility which waives or otherwise affects the required compliance with a provision of this rule does not constitute a waiver respecting, or otherwise affect, the required compliance of any other electric utility.

(B) The commission may not waive or grant a variance from this rule in total.

REVISED PRIVATE FISCAL NOTE: The cost to private entities may have originally been estimated too low. However, the commission has made substantial changes to the rule text which should have caused the fiscal cost to be in line with what was originally reported. Therefore, the commission has attached a revised fiscal note with new assumptions.

***Ruling by the Joint Committee on Administrative Rules**. On July 1, 2010, the Joint Committee on Administrative Rules voted to disapprove subsection (2)(A) and paragraph (2)(B)2. of 4 CSR 240-20.100. Those portions contained provisions on geographic sourcing. The committee considered those portions which were disapproved to be held in abeyance and asked that they not be published.*

REVISED FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name	Type of Rulemaking
4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimated number of entities that will likely be affected by adoption of the rule.	Types of entities that will likely be affected by adoption of the rule.	Estimated aggregate cost of compliance with the rule by the affected entities.	
4	Investor-owned electric utilities	2011	$45,598,989
		2012	$51,140,062
		2013	$51,696,417
		2014	$51,766,263

III. WORKSHEET

Estimated aggregate cost of compliance is based on information provided by the four (4) investor-owned electric utilities. The specific information provided was deemed Highly Confidential by the utilities unless it was utilized to develop an aggregate number.

IV. ASSUMPTIONS

If adopted, this proposed rule will prescribe requirements and procedures for electric utility compliance with the Missouri Renewable Energy Standard. The Missouri Renewable Energy Standard (RES) was enacted by Initiative Petition on November 4, 2008. The RES includes certain requirements for the utilization of renewable sources for generation of electric energy. The requirements increase incrementally, beginning in 2011. The last incremental change is in 2021, with the requirements of 2021 continuing forward beyond that year. The estimated aggregate cost to Missouri electric utilities is provided for the first four (4) years. Similar costs could be incurred through at least 2021.

The original fiscal note considered entities that would need to comply with the rule which are the four investor-owned electric utilities in the state. It has been suggested during the course of the Joint Committee on Administrative Rules process that the original fiscal note was underestimated[1] because it does not contain the cost of compliance with a mandatory standard offer contract. The commission has revised the rule to make the standard offer contract discretionary. Thus, that cost need not be included here.

The commission has also reconsidered the fiscal note in light of the amendments to the retail rate impact changing from an incremental approach to a cumulative approach. The commission also assumes that this will greatly lower the cost of compliance with the rule as it will decrease the cost on electric utility consumers. However, because it was suggested that the original fiscal note estimating compliance was too low, the commission will not revise the dollar amounts in the fiscal note as they should still represent the cost of an electric utility to comply with the portfolio requirements as set out in Proposition C.

[1] *Dissent of Commissioner Jeff Davis to the Final Proposed Order of Rulemaking for 4 CSR 240-20.100 and 4 CSR 240-3.156*, issued June 2, 2010; suggesting that the standard offer contract would cost an additional $210,000,000. *Letter from Edward Downey, attorney for Missouri Industrial Energy Consumers, to Cindy Kadlec, Director, Joint Committee on Administrative Rules*, dated June 22, 2010; suggests that the cost to comply could be $90 million higher each year from 2011-2013, $250 million higher each year from 2014-2017, and $500 million higher from 2018-2020.

STATE OF MISSOURI
JOINT COMMITTEE ON ADMINISTRATIVE RULES
CINDY KADLEC, DIRECTOR

STATE CAPITOL, ROOM B-8
JEFFERSON CITY, MO 65101

PHONE (573) 751-2443
FAX (573) 751-4778

July 1, 2010

The Honorable Robin Carnahan
Office of the Secretary of State
State of Missouri
State Information Center
Jefferson City, MO

RECEIVED
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SECRETARY OF STATE
ADMINISTRATIVE RULES

RE: Department of Economic Development
Public Service Commission
Renewable Energy
4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements

Dear Secretary Carnahan:

The Public Service Commission today filed with the Joint Committee on Administrative Rules an Amended Order of Rulemaking for the above-referenced rule. The Joint Committee on Administrative Rules has conducted hearings on this rule.

This letter is to inform you that the Joint Committee on Administrative Rules voted today to disapprove specific portions of rule 4 CSR 240-20.100. Those specific portions of the rule disapproved were (2)(A) and (2)(B)2, which contain provisions on geographic sourcing. Included in the Committee's motion was an action to approve the remaining portions of this rule and waive any further time the Committee may have to conduct hearings on the rule. The Committee considers those portions which were disapproved to be held in abeyance at this time and asks that you not publish those portions of the rule.

I appreciate your cooperation in resolving this matter.

Respectfully submitted,

Senator Luann Ridgeway
Chairman Joint Committee on Administrative Rules

cc: Secretary of the Senate
Chief Clerk, House of Representatives

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking Regarding Electric Utility Renewable Energy Standard Requirements	)))	**File No. EX-2010-0169**

DISSENTING OPINION OF COMMISSIONER TERRY M. JARRETT

The law is clear and I strongly oppose the majority's decision with regard to its approval of filing with the Secretary of State the second/revised Order of Rulemaking of this Commission without compliance with the provisions of Section 536.073.8 RSMo 2009. That section makes it clear that this agency shall "not file [any] disapproved portion of any rule with the secretary of state ..." if the joint committee on administrative rules disapproves any rule or portion thereof. On July 1, 2010 the Joint Committee on Administrative Rules voted to disapprove sections 4 CSR 240-20.100(2)(A) and 4 CSR 240-20.100(2)(B)2 and to hold these sections in abeyance. In a letter dated July 1, 2010, by Senator Luann Ridgeway, Chairman Joint Committee on Administrative Rules to the Missouri Secretary of State, this information is communicated while also informing the Secretary to refrain from publishing the disapproved sections.[1]

The Missouri Public Service Commission, however, by a 3-2 vote, has determined that it will overlook the mandatory statutory obligations assigned to it under Section 536.073.8 and has directed the Secretary of the Commission to ***submit***[2] the Amended

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[1] State of Missouri, Joint Committee on Administrative Rules, Letter from the Honorable Luann Ridgeway, July 1, 2010 to the Honorable Secretary of State Robin Carnahan.

[2] Section 536.021.1 requires this Commission to ***file***, not submit the final Order of Rulemaking to the Secretary of State. I do not know what the majority means by the term "submit" but I assume it means something different then the term "file" in that they chose not to use "file" which is contained in the law.

Rule, in its complete form, without regard to the law. Because the rule being presented to the Secretary of State is not in conformance with the law, I respectfully dissent.

Focus on the outcome or effect of following the law is not a matter for deliberation by this Commission; rather, this Commission's charge is plain, straightforward and simple - that is, to follow the law, not to ignore it as it sees fit. John Adams once said, "we are a nation of laws, not men." I am afraid that the majority's action today turns that bedrock principle on its head.

Respectfully Submitted,

Terry M. Jarrett

Submitted this 6th day of July, 2010.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking Regarding Electric Utility Renewable Energy Standard Requirements.	)))	File No. EX-2010-0169

DISSENT OF COMMISSIONER JEFF DAVIS TO AUTHORIZE FILING OF RENEWABLE ENERGY STANDARDS RULES WITH THE SECRETARY OF STATE

I respectfully dissent with the majority of my Commission colleagues in their decision to transmit the entire rule to the Secretary of State including those portions specifically disapproved of by the Joint Committee on Administrative Rules (JCAR). I concur with Commissioner Jarrett's dissent and wish to offer a few more brief thoughts.

THE RULE ITSELF IS IMPROVED, BUT STILL NEEDS MUCH WORK:

First, the rule is improved. Had JCAR not intervened Missourians would be stuck with a standard offer contract that would enrich the solar industry at everyone else's expense and utilities would have been facing costly litigation over penalty provisions that everyone now recognizes as being unconstitutional. I am glad my colleagues came to their senses and voted to amend these provisions.

More importantly, JCAR did its job and should be lauded for stopping the geographic sourcing provisions of this regulation. These two provisions will cost tens, possibly hundreds of millions of dollars in the aggregate and those costs will ultimately be born by the ratepayers if adopted.

The rate cap language is also problematic. I heard counsel for Renew Missouri as well as my colleagues at times talk about the intent of the voters or legislative intent.

Everyone needs to get one thing straight – the majority wasn't following the intent of the voters in crafting this section. My impression and that of every disinterested person I asked is that they thought they were voting for a one percent rate cap or at worst one percent per year, not one percent over what projected rates would be otherwise.

THE LAW IS NOT SILLY PUTTY FOR AGENCIES TO MOLD AS THEY SEE FIT:

I might not be as eloquent as Commissioner Jarrett quoting John Adams, but my concerns are the same. The law is the law. It's not some guideline that we can disregard at will and read ambiguity into where there is absolutely none. It's designed to limit our actions as public officials, not to be treated like silly putty that we can mold into whatever we want it to be in order to achieve whatever particular purpose we might have at the time, no matter how noble that purpose may be. There is a simple solution: if you don't like the law, change it. We have separation of powers for a reason – to prevent one branch of government from overreaching the other two. There was a whole lot of overreaching going on in this rulemaking docket.

I AM CONCERNED THAT THE PSC MAJORITY HAS DAMAGED OUR CREDIBILITY WITH THE MISSOURI GENERAL ASSEMBLY:

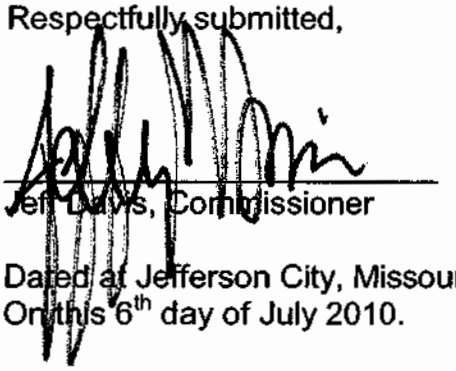
Finally, I am deeply concerned that the Commission majority's initial interpretation of the statutes in submitting the rule to JCAR and its subsequent course of conduct has damaged our credibility with the Missouri General Assembly. We have to appear in front of the legislature to testify on our budget and on numerous other policy issues. We need the legislature's support and I question whether they are going to be inclined to listen to us after this debacle.

The legislature has a number of tools at its disposal when dealing with administrative agencies. It would be unfortunate, but understandable if the PSC budget gets reduced, our

rulemaking authority gets restricted or nobody listens to us on an important policy issue as a result of these events.

For all of these reasons, I respectfully dissent.

Respectfully submitted,



Jeff Davis, Commissioner

Dated at Jefferson City, Missouri
On this 6th day of July 2010.