Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

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

PROPOSED RULE

4 CSR 240-3.156 Electric Utility Renewable Energy Standard Filing Requirements

PURPOSE: This rule provides a reference to the commission's electric utilities rule regarding this subject.

(1) The requirements for filings regarding the electric utility renewable energy standard are contained in commission rule 4 CSR 240-20.100.

AUTHORITY: section 393.1030, RSMo Supp. 2009 and sections 386.040 and 386.250, RSMo 2000. Original rule filed Jan. 8, 2010.

PUBLIC COST: This proposed rule will not cost affected state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost affected private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before April 5, 2010, and should include a reference to Commission Case No. EX-2010-0169. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed rule is scheduled for April 6, 2010, at 9:00 a.m. in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

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

PROPOSED RULE

4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements

PURPOSE: This rule sets the definitions, structure, operation, and procedures relevant to compliance with the Renewable Energy Standard.

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

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

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

(C) 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;

(D) Customer-generator means the owner 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;

4. Meets all applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and

Electronic Engineers, Underwriters Laboratories, the Federal Energy Regulatory Commission, and any local governing authorities; and

5. Contains a mechanism that automatically disables the unit and interrupts the flow of electricity onto the electric utility's electrical system whenever the flow of electricity from the electric utility to the customer-generator is interrupted;

(E) Department means the Department of Natural Resources;

(F) Electric utility means an electrical corporation as defined in section 386.020, RSMo;

(G) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(H) Green pricing program means a voluntary program that provides an electric utility's retail customers an opportunity to purchase renewable energy or renewable energy credits (RECs);

(I) Rate class means a customer class defined in an electric utility's tariff. Generally, rate classes include Residential, Small General Service, Large General Service, and Large Power Service, but may include additional rate classes. Each rate class includes all customers served under all variations of the rate schedules available to that class;

(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 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 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 one (1) 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;

(L) RES or Renewable Energy Standard means sections 393.1025 and 393.1030, RSMo;

(M) RESRAM or Renewable Energy Standard Rate Adjustment Mechanism means a mechanism that allows periodic rate adjustments to recover prudently incurred RES compliance costs and pass-through to customers the benefits of any savings achieved in meeting the requirements of the Renewable Energy Standard;

(N) RES compliance costs means prudently incurred costs, both capital and expense, directly related to compliance with the Renewable Energy Standard. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the electric utility;

(O) RES requirements mean the numeric values and other requirements established by section 393.1030.1, RSMo, and subsections (2)(C) and (2)(D) of this rule;

(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; 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;

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

(R) Staff means the staff of the commission;

(S) Standard Test Conditions means solar incidence of one (1) kilowatt (kW) per square meter and a cell or panel temperature of twenty-five degrees centigrade (25 °C) as related to measuring the capability of solar electrical generating equipment;

(T) Total retail electric sales, or total retail electric energy usage, means the megawatt-hours of electricity delivered in a specified time period by an electric utility to its Missouri retail customers as reflected in the retail customers' monthly billing statements; and

(U) Utility renewable energy resources mean those renewable energy resources that are owned, controlled, or purchased by the electric utility.

(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.

(A) Electric energy or RECs associated with electric energy are eligible to be counted towards the RES requirements only if the generation facility for the renewable energy resource is either located in Missouri or, if located outside of Missouri, the renewable energy resource is sold to Missouri electric energy retail customers. For renewable energy resources generated at facilities located outside Missouri, an electric utility shall provide proof that the electric energy was sold to Missouri customers.

(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)(H) of this rule; and

2. If the facility generating the renewable energy resources is located outside Missouri, the allowed amount is the amount of megawatt-hours generated by the applicable generating facility that is sold to Missouri customers. For the purposes of subsections (A) and (B) of this section, Missouri electric energy retail customers shall include retail customers of regulated Missouri utilities as well as customers of Missouri municipal utilities and Missouri rural electric cooperatives.

(C) The RES requirements are—

1. No less than two percent (2%) in each calendar year 2011 through 2013;

2. No less than five percent (5%) in each calendar year 2014 through 2017;

3. No less than ten percent (10%) in each calendar year 2018 through 2020; and

4. No less than fifteen percent (15%) in each calendar year beginning in 2021.

(D) At least two percent (2%) of each RES requirement listed in subsection (C) of this section shall be derived from solar energy. The RES solar energy requirements are—

1. No less than four-hundredths percent (0.04%) in each calendar year 2011 through 2013;

2. No less than one-tenth percent (0.1%) in each calendar year 2014 through 2017;

3. No less than two-tenths percent (0.2%) in each calendar year 2018 through 2020; and

4. No less than three-tenths percent (0.3%) in each calendar year beginning in 2021.

(E) If compliance with the above RES and RES solar energy requirements would cause retail rates to increase on average in excess of one percent (1%) as calculated per section (5) of this rule, the above requirements shall be limited to providing renewable energy in amounts that would cause retail rates to increase on average one percent (1%) as calculated per section (5) of this rule.

(F) If an electric utility is not required to meet the RES requirements of subsection (C) of this section in a calendar year, because doing so would cause retail rates to increase on average in excess of one percent (1%) as calculated per section (5) of this rule, then the RES solar energy requirement specified in subsection (2)(D) shall be two percent (2%) of the renewable energy that can be acquired subject to the one percent (1%) average retail rates limit as calculated per section (5) of this rule.

(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 include a written separation policy and name an independent auditor whom the electric utility proposes to hire to review and report to the commission on the fairness of the competitive acquisition process. The independent auditor shall have at least five (5) years' experience conducting and/or reviewing the conduct of competitive electric utility resource acquisition, including computerized portfolio costing analysis. The independent auditor shall be unaffiliated with the electric utility and shall not, directly or indirectly, have benefited from employment or contracts with the utility in the preceding five (5) years, except as an independent auditor under these rules. The independent auditor shall not participate in, or advise the electric utility with respect to, any decisions in the bid solicitation or bid evaluation process. The independent auditor shall conduct an audit of the electric utility's bid solicitation and evaluation process to determine whether it was conducted fairly. For purposes of such audit, the electric utility shall provide the independent auditor immediate and continuing access to all documents and data reviewed, used, or produced by the electric utility in its bid solicitation and evaluation process. The utility shall make all its personnel, agents, and contractors involved in the bid solicitation and evaluation available for interview by the auditor. The electric utility shall conduct any additional modeling requested by the independent auditor to test the assumptions and results of the bid evaluation analyses. Within sixty (60) days of the utility's selection of renewable energy resources, the independent auditor shall file a report with the commission containing the auditor's findings on whether the electric utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. After the filing of the independent auditor's report, the electric utility, other bidders in the renewable energy resource acquisition process, and other interested parties shall be given the opportunity to review and comment on the independent auditor's report. For the purposes of this subsection, the role and responsibilities of independent auditor may be fulfilled by staff.

(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.

(B) An REC may only be used once to comply with this rule. RECs or S-RECs used to comply with this rule may not also be used to satisfy any similar nonfederal renewable energy standard or requirement. Electric utilities may not use RECs or S-RECs retired under a green pricing program to comply with this rule. An REC or S-REC may be used for compliance with the RES or RES solar requirements of this rule for a calendar year in which it expired so long as it was valid during some portion of that year.

(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 applicable.

(D) RECs that are generated with fuel cell energy using hydrogen derived from a renewable energy resource are eligible for compliance purposes only to the extent that the energy used to generate the hydrogen did not create RECs.

(E) If an electrical generator co-fires an eligible renewable energy fuel source with an ineligible fuel source, only the proportion of the electrical energy output associated with the eligible renewable energy fuel source shall be permitted to count toward compliance with the RES. For co-fired generation of electricity, the renewable energy resources shall be determined by multiplying the electricity output by the direct proportion of the as-fired British thermal unit (BTU) content of the fuel burned that is a source of renewable energy resources as defined in this rule to the as-fired BTU content of the total fuel burned.

(F) Electric utilities shall record REC information in a database. The database shall include, but not be limited to, a list of renewable energy resources the electric utility utilizes for compliance with the RES, including type, location, owner, operator, commencement of operations, and actual REC generation.

(G) All electric utilities shall use a commission designated common central third-party registry or other equivalent electronic tracking mechanism for REC accounting for RES requirements. Use of this tracking mechanism may suffice for compliance with subsection (F) of this section.

(H) 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) or (G) 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.

(I) 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.

(J) 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.

(K) For compliance purposes, utilities shall retire RECs in sufficient quantities to meet the requirements of this rule. The REC shall

be retired during the calendar year for which compliance is being achieved. Utilities may retire RECs during the month of January, 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 (G) of this section and the annual compliance report filed in accordance with section (7) of this rule. RECs retired in January, 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.

(L) Fractional RECs may be aggregated with other fractional RECs and utilized for compliance purposes.

(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 solar generating equipment shall be interconnected with the electric utility's system and have a rated capacity of greater than or equal to five hundred (500) watts.

(A) The retail account holder must be an active account on the electric utility's system and in good payment standing.

(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.

(C) The installed solar electric system must remain in place on the account holder's premises for the duration of its useful life which shall be deemed to be ten (10) years unless determined otherwise by the commission.

(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, with the exception of solar battery components. Rebuilt, used, or refurbished equipment is not eligible to receive the rebate. For any applicable solar electric system, only one (1) rebate shall be paid for the lifetime of the solar electric system. 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 tariff approved by the commission for customer-owned generation.

(F) The electric utility may inspect retail account holder owned solar electric systems for which it has paid a solar rebate pursuant to this section, at any reasonable time, with prior notice of at least three (3) business days provided to the retail account holder. Advance notice is not required if there is reason to believe the unit poses a safety risk to the retail account holder, the premises, the utility's electrical system, or the utility's personnel.

(G) For the purpose of determining the amount of solar rebate, the solar electric system wattage rating shall be established as the direct current wattage rating provided by the original manufacturer with respect to standard test conditions.

(H) At the time of the rebate payment or anytime thereafter, the electric utility shall offer a one (1)-time lump sum payment, called a Standard Offer Contract, for the current ten (10)-year fixed price for associated S-RECs. The sale of any S-RECs created by the installed solar electric system shall not be included as a requirement of the utility's interconnection agreement. The Standard Offer Contract shall include a requirement for the retail account holder to provide a certification to the electric utility of continued operation of the solar electric system at least five (5) years and not greater than six (6) years after the acceptance of the Standard Offer Contract. Failure to provide this certification shall result in forfeiture by the retail account holder of the prorated portion of the Standard Offer Contract payment. For purposes of this subsection, the energy that shall be generated by a solar photovoltaic system with a nameplate capacity of ten (10) kW or less shall be estimated using generally accepted analytical tools, unless such smaller systems are equipped with monitoring technology to track actual production. The selection and use of these analytical tools shall be conducted in consultation with the staff of the commission.

(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.

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

(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 are accepted for the solar rebates 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 Standard Offer Contract, the applicant shall file a report 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.

(L) If the solar rebate program for an electric utility causes the utility to meet or exceed the retail rate impact limits of section (5) of this rule, the solar rebates shall be paid on a first-come, first-served basis, as determined by the solar system operational date. Any solar rebate applications that are not honored in a particular calendar year due to the requirements of this subsection shall be the first applications considered in the following calendar year.

(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 rate impact shall be calculated on an incremental basis for each addition of renewable generation through procurement or development of renewable energy resources, averaged over a ten (10)-year period, and shall exclude renewable energy resources under contract prior to the effective date of this rule and renewable energy resources previously determined not to exceed the one percent (1%) threshold.

(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. 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. 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 renewable energy resources shall be reduced by the cost of greenhouse gas emissions reductions, assuming that such reductions are made at the then-current cost per ton of greenhouse gas emissions allowances or the cost of greenhouse gas emission reduction technology, whichever is lower. Any variables utilized in the modeling shall be consistent with values established in prior rate proceedings 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 through the procurement or development of renewable energy resources.

(C) Rebates made during any calendar year in accordance with section (4) of this rule shall be included in the cost of generation from 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 a 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 revenue requirement differential does not at any time 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.

(6) Cost Recovery and Pass-through of Benefits. Pursuant to this rule and sections 393.1030 and 393.1045, RSMo, 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.

(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.

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. These carried forward 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)28.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 a RESRAM 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 sections 393.1030 and 393.1045, RSMo, 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 ninety (90) 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. 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;

B. 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;

C. 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;

D. 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;

E. The depreciation rates used in calculating the proposed RESRAM, and an explanation of the source of and the basis for

using those depreciation rates;

F. 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;

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

H. 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 sections 393.1030 and 393.1045, RSMo. 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 base rates and the specific account used for each cost item on the electric utility's books and records;

F. 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;

G. 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;

H. 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

I. 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; and

(VII) 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.

(7) Annual Compliance Report and RES Compliance Plan. Each electric utility shall file an annual 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. 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 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, 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 subparagraph D. 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 source of RECs purchased by the utility to meet RES requirements did not cause undue adverse air, water, or land use impacts pursuant to subsection 393.1030.4. RSMo, and department rule.

(C) Upon receipt of the electric utility's annual RES compliance report and RES compliance plan, the commission shall establish a docket for the purpose of receiving the report and plan. The commission shall issue a general notice of the filing.

(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 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 within forty-five (45) days of the electric utility's filing of its compliance report with the commission.

(F) The commission shall issue an order which establishes a procedural schedule, if necessary.

(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) 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.

(B) Penalty payments 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 (B)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's energy center in consultation with the staff.

(C) 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 shall be based on 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 and determined by the staff. The Office of the Public Counsel and any interested persons or entities may file comments based on their review of staff's determination of REC and S-REC value. The commission shall issue an order which establishes a procedural schedule, if necessary.

(D) 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) Solar Energy Exemptions. Pursuant to section 393.1050, RSMo, and this rule, electric utilities may be exempt from certain requirements of the RES.

(A) Any electric utility which, by January 20, 2009, achieved an amount of renewable energy resource aggregate nameplate capacity equal to or greater than fifteen percent (15%) of the electric utility's total owned fossil-fired generating capacity shall be exempt from the following requirements of this rule:

1. The requirement to provide a solar rebate or Standard Offer Contract to the electric utility's retail customers in accordance with section 393.1030, RSMo, and section (4) of this rule; and

2. The requirement to provide a certain percentage of its total retail electric sales from solar energy in accordance with section 393.1030, RSMo, and section (2) of this rule.

(10) 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.

(11) 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.

(C) The commission may not waive or grant a variance from any section of this rule that implements the specific requirements of section 393.1025, 393.1030, 393.1040, 393.1045, or 393.1050, RSMo.

Electric Company
12 Months Ended _____
Per Books
(IN THOUSANDS OF DOLLARS)
FINANCIAL SURVEILLANCE MONITORING REPORT
RATE BASE AND RATE OF RETURN

Total Company Rate Base	Measurement Basis		12 Months Ended
Plant in Service			
Intangible	End of Period	xxx,xxx	
Production – Steam	End of Period	xxx,xxx	
Production – Nuclear	End of Period	xxx,xxx	
Production – Hydraulic	End of Period	xxx,xxx	
Production – Other	End of Period	xxx,xxx	
Transmission	End of Period	xxx,xxx	
Distribution	End of Period	xxx,xxx	
General	End of Period	xxx,xxx	
Total Plant in Service	End of Period		$ x,xxx,xxx
Reserve for Depreciation			
Intangible	End of Period	xxx,xxx	
Production – Steam	End of Period	xxx,xxx	
Production – Nuclear	End of Period	xxx,xxx	
Production – Hydraulic	End of Period	xxx,xxx	
Production – Other	End of Period	xxx,xxx	
Transmission	End of Period	xxx,xxx	
Distribution	End of Period	xxx,xxx	
General	End of Period	xxx,xxx	
Total Reserve for Depreciation			x,xxx,xxx
Net Plant			x,xxx,xxx
Add:			
Materials & Supplies	13 Mo. Avg.		x,xxx,xxx
Cash	(from prior rate case including offsets)		x,xxx,xxx
Fuel Inventory	13 Mo. Avg.		x,xxx,xxx
Prepayments	13 Mo. Avg.		x,xxx,xxx
Other Regulatory Assets	End of Period		x,xxx,xxx
Less:			
Customer Advances	13 Mo. Avg.		x,xxx,xxx
Customer Deposits	13 Mo. Avg.		x,xxx,xxx
Accumulated Deferred Income Taxes	End of Period		x,xxx,xxx
Other Regulatory Liabilities	End of Period		x,xxx,xxx
Other Items from Prior Rate Case	Per rate case method		x,xxx,xxx
(A) Total Rate Base			$ x,xxx,xxx
(B) Net Operating Income			$ x,xxx,xxx
(C) Return on Rate Base Base [(B) / (A)]			

Electric Company
12 Months Ended _____
Per Books
(IN THOUSANDS OF DOLLARS)
FINANCIAL SURVEILLANCE MONITORING REPORT
CAPITAL STRUCTURE AND RATE OF RETURN

Overall Cost of Capital

		Amount	Percent	Cost		Weighted Cost
Long-Term Debt	$	x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Short-Term Debt		x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Preferred Stock		x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Other	d	x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Common Equity		x,xxx,xxe	x.xx%	x.xx%	a	x.xx%
Total Overall Cost of Capital based on Rate Case Rate of Return on Equity	$	x,xxx,xxx	100.00%			x.xx%

Actual Earned Return on Equity

		Amount	Percent	Cost		Weighted Cost
Long-Term Debt	$	x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Short-Term Debt		x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Preferred Stock		x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Other	d	x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Common Equity		x,xxx,xxe	x.xx%	x.xx%	c	x.xx%
Total Overall Cost of Capital with Actual Return On Equity	$	x,xxx,xxx	100.00%			x.xx% b

a From last general rate case, Report & Order
b From actual Return on Rate Base, page 1 "Rate Base"
c Calculated after actual Return on Rate Base, per footnote B, is determined
d Other capital structure components from last general rate case, Report & Order
e Actual balance at end of period
f Actual average cost at end of period

Note Additional breakdown may be added per Report & Order authorizing a recovery clause under 4 CSR 240-20

Electric Company
Quarter Ended and 12 Months Ended _____
Per Books
(IN THOUSANDS OF DOLLARS)
FINANCIAL SURVEILLANCE MONITORING REPORT
OPERATING INCOME STATEMENT

	Quarter Ended Actual		12 Months Ended Actual	
Operating Revenues				
Sales to Residential, Commercial, & Industrial Customers				
Residential	$ x,xxx,xxx		$ x,xxx,xxx	
Commercial	x,xxx,xxx		x,xxx,xxx	
Industrial	x,xxx,xxx		x,xxx,xxx	
Total of Sales to Residential, Commercial, & Industrial Customers		$ x,xxx,xxx		$ x,xxx,xxx
Other Sales to Ultimate customers		x,xxx,xxx		x,xxx,xxx
Sales for Resale				
Off-System Sales		x,xxx,xxx		x,xxx,xxx
Other Sales for Resale		x,xxx,xxx		x,xxx,xxx
Provision for Refunds		x,xxx,xxx		x,xxx,xxx
Other Operating Revenues		x,xxx,xxx		x,xxx,xxx
Operating Revenues		$ x,xxx,xxx		$ x,xxx,xxx
Operating & Maintenance Expenses				
Production Expenses				
Fuel Expense				
Native Load	x,xxx,xxx		x,xxx,xxx	
Off-System Sales	x,xxx,xxx		x,xxx,xxx	
Other Production-Operations	x,xxx,xxx		x,xxx,xxx	
Other Production-Maintenance	x,xxx,xxx		x,xxx,xxx	
Purchased Power-Energy				
Native Load	x,xxx,xxx		x,xxx,xxx	
Off -System Sales	x,xxx,xxx		x,xxx,xxx	
Purchased Power-Capacity	x,xxx,xxx		x,xxx,xxx	
Total Production Expenses		x,xxx,xxx		x,xxx,xxx
Transmission Expenses		x,xxx,xxx		x,xxx,xxx
Distribution Expenses		x,xxx,xxx		x,xxx,xxx
Customer Accounts Expense		x,xxx,xxx		x,xxx,xxx
Customer Serve. & Info. Expenses		x,xxx,xxx		x,xxx,xxx
Sales Expenses		x,xxx,xxx		x,xxx,xxx
Administrative & General Expenses		x,xxx,xxx		x,xxx,xxx
Total Operating & Maintenance Expenses		$ x,xxx,xxx		$ x,xxx,xxx
Depreciation & Amortization Expense				
Depreciation Expense	x,xxx,xxx		x,xxx,xxx	
Amortization Expense	x,xxx,xxx		x,xxx,xxx	
Decommissioning Expense	x,xxx,xxx		x,xxx,xxx	
Other	x,xxx,xxx		x,xxx,xxx	
Total Depreciation & Amortization Expense		x,xxx,xxx		x,xxx,xxx
Taxes Other than Income Taxes		xxx,xxx		xxx,xxx
Operating Income Before Income Tax		x,xxx,xxx		x,xxx,xxx
Income Taxes		xxx,xxx		x,xxx,xxx
Net Operating Income		$ x,xxx,xxx		$ x,xxx,xxx
Actual Cooling Degree Days		x,xxx		x,xxx
Normal Cooling Degree Days		x,xxx		x,xxx
Actual Heating Degree Days		x,xxx		x,xxx
Normal Heating Degree Days		x,xxx		x,xxx

Electric Company
12 Months Ended _____
FINANCIAL SURVEILLANCE MONITORING REPORT
Missouri Jurisdictional Allocation Factors

Description	Allocation Factor
Plant in Service	
Intangible	
Production – Steam	
Production – Nuclear	
Production – Hydraulic	
Production – Other	
Transmission	
Distribution	
General	
Depreciation Reserve	
Intangible	
Production – Steam	
Production – Nuclear	
Production – Hydraulic	
Production – Other	
Transmission	
Distribution	
General	
Net Plant	
Materials & Supplies	
Cash Working Capital	per rate case
Fuel Inventory	
Prepayments	
Other Regulatory Assets	Jurisdictional Specific
Customer Advances	
Customer Deposits	
Accumulated Deferred Income Taxes	
Other Regulatory Liabilities	Jurisdictional Specific
Other Items from Prior Rate Case	
Operating Revenues	
Interchange Revenues	
Production Expenses:	
Fuel Expense	
Native Load	
Off-System Sales	
Other Production – Operations	
Other Production – Maintenance	
Purchased Power – Energy	
Native Load	
Off-System Sales	
Purchased Power – Capacity	
Total Production Expenses	
Transmission Expenses	
Distribution Expenses	
Customer Accounts Expense	
Customer Serve. & Info. Expenses	
Sales Expenses	
Administrative & General Expenses	
Depreciation Expense	
Depreciation Expense	
Amortization Expense	
Decommissioning Expense	
Taxes, Other than Income	
Income Taxes	
Other Items	
xxxx	
xxxx	
xxxx	

Note Additional breakdown may be added per Report & Order authorizing a recovery clause under 4 CSR 240-20

Electric Company
Quarter Ended and 12 Months Ended _____
Per Books
FINANCIAL SURVEILLANCE MONITORING REPORT

NOTES TO FINANCIAL SURVEILLANCE REPORT

AUTHORITY: section 393.1030, RSMo Supp. 2009 and sections 386.040 and 386.250, RSMo 2000. Original rule filed Jan. 8, 2010.

PUBLIC COST: This proposed rule will cost affected state agencies or political subdivisions one hundred fifty-one thousand thirty-two dollars ($151,032) per year through at least 2021.

PRIVATE COST: This proposed rule will cost affected private entities $45,598,989 in 2011, $51,140,062 in 2012, $51,696,417 in 2013, $51,766,263 in 2014, and a similar amount each year thereafter through at least 2021.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before April 5, 2010, and should include a reference to Commission Case No. EX-2010-0169. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed rule is scheduled for April 6, 2010, at 9:00 a.m. in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

FISCAL NOTE

PUBLIC 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

State agencies or political subdivisions that will likely be affected by adoption of the proposed rule.	Estimated aggregate cost of compliance with the proposed rule by the affected entities.
Missouri Public Service Commission	$151,032

III. WORKSHEET

Position	Estimated Annual Salary
Utility Regulatory Auditor III	$45,984
Utility Engineering Specialist II	$57,864
Associate Counsel	$47,184
Total	$151,032

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. Electric utilities will be authorized to recover prudently incurred costs and pass through benefits to customers outside the context of a regular rate case. Verification of RES compliance and cost recovery/benefit pass-through analysis will impact resources of the Missouri Public Service Commission staff. Similar staff impacts could be incurred through at least 2021.

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.

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 my colleagues in their reasoning and decision to file these rules with the Secretary of State as they are being submitted.

First, these rules may exceed the Commission's statutory authority prescribed in Section 393.1030.2(1) and Section 393.1045 in that, as proposed, 4 CSR 240-20.100(5) purports to authorize up to a one percent (1%) rate increase annually for utilities and ultimately their consumers. At the time "Proposition C" was passed by the voters, there were numerous representations made in various forums by its supporters that customer rates could only go up one percent (1%) as a result of the ballot initiative, not one percent (1%) a year which could amount to ten percent (10%) over the next decade.

Second, the language as sent by the Commission to the Secretary of State promulgating these rules made necessary by the passage of Proposition C go above and beyond what should be deemed "just and reasonable" in the ratemaking context. These rules give the wind and solar industries almost all the benefits of the doubt in providing another generous package of corporate welfare benefits to the renewables industry on top of the subsidies they are already receiving from the federal government and local

governments, rather than establishing the renewal energy standards under cost limits approved by voters with the adoption of Proposition C.

The Background of "Proposition C":

In the November 2008 General Election, Missouri voters approved "Proposition C" by almost a 2-1 margin. The official ballot language adopted by Secretary of State Robin Carnahan's office is important because many voters base their decisions on that language, rather than the extensive legal text of the statute. The official ballot language for "Proposition C" is available at the Secretary of State's website (www.sos.mo.gov/elections/2008ballot/) and states in pertinent part:

Official Ballot Title as Certified by Secretary of State:

Shall Missouri law be amended to require investor-owned electric utilities to generate or purchase electricity from renewable energy sources such as solar, wind, biomass and hydropower with the renewable energy sources equaling at least 2% of retail sales by 2011 increasing incrementally to at least 15% by 2021, including at least 2% from solar energy; ***and restricting to no more than 1% any rate increase to consumers for this renewable energy?*** (Emphasis added)

* * *

Proposed fair ballot language for Proposition C:

A "yes" vote will amend Missouri law to require investor-owned electric utilities to generate or purchase electricity from renewable energy sources such as solar, wind, biomass (including ethanol) and hydropower. The required renewable energy sources must equal the following percentages of retail sales.

- 2% by 2011
- 5% by 2014
- 10% by 2018
- 15% by 2021.

> Of the total renewable energy sources required to be sold, at least 2% shall be solar sources. ***Also, any rate increase to consumers resulting from this measure must be no more than 1%.*** (Emphasis added)

The actual language of the statute adopted by the voters differs from the ballot language in that Section 393.1030.2(1) states:

> **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.**

Then, Section 393.1045 (which was passed by the General Assembly in the 2008 Regular Session) goes on to state:

> **Any renewable mandate required by law shall not raise the retail rates charged to the customers of electric retail suppliers by an average of more than one percent in any year, and all the costs associated with any such renewable mandate shall be recoverable in the retail rates charged by the electric supplier. Solar rebates shall be included in the one percent rate cap provided for in this section.**

Section 393.1030.2(1) nimbly sets the stage for parties to encourage this Commission to expand the definition of the one percent (1%) rate cap in that it requires the Commission to consider what rates would be otherwise – a speculative task that unless exercised within the 1 percent cap voters established could be used unfairly to increase the limit far beyond one percent. Some of the parties who presented testimony in the underlying docket have expressed the belief that the law would allow rates to be increased as follows: Assume that a customer has an actual electric bill of $100.00 per month. If 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 would result in a hypothetical bill of $120.00, then the increase due to the use of renewables could be 1% more than that hypothetical bill, i.e., increase

from $100.00 to $120.00 plus an additional 1% ($121.20). I don't believe that's what the voters of this state were contemplating when they were asked to vote on this ballot initiative in November 2008 when they voted for it, but there is a very real risk the language can be construed that way.

Section 393.1045 states rates cannot rise "by an average of more than one percent in any year". By capping the rate increase at an average of one percent in any year, it does seem to prohibit any annual compounding effect; however, does this statement mean that the Commission has the authority to raise rates an average of one percent (1%) a year for the next decade if the utility demonstrates it has prudently incurred costs for renewable projects necessary to comply with the mandate of Proposition C?

Phrased another way, if a utility has an installment contract with a wind farm to purchase $1 million worth of wind a year for twenty years, should the utility only be required to count the first $1 million payment under the contract and not be required to count the $1 million payment towards the cap in subsequent years when the utility will certainly be recovering that $1 million cost from its customers? The only thing I can say for sure is that years of litigation will be necessary to sort out the meaning of these statutes and I have serious concerns that the actual text of the voter approved statutes may be correctly interpreted to have an adverse impact on utility consumers – one that was definitely not contemplated by the voters in light of the ballot language highlighted above.

This proposal makes the one percent rate cap promised to Missouri voters a fiction.

State law requires this Commission to adopt rules implementing Proposition C. My concern is not in carrying out the law – that's easy. My concern is that the people of Missouri were misled to believe they could increase Missouri's use of "clean energy" at a

cost of 1% - not 1% a year each year for 10 years or more – and certainly not 1% more than what rates would be if Missouri continued to generate electricity using nothing but coal in an era of carbon regulation.

All of this occurs at a time when the Commission is hearing from an endless stream of consumers – residential, commercial and industrial -- that their utility bills are becoming increasingly unaffordable. Unlike rate cases where the Commission is required by law to set "just and reasonable" rates and the courts have interpreted that phrase to mean the opportunity to earn a return comparable to that of other similar investments, the Commission had discretion to propose a rule more favorable to consumers and failed to do so under the guise of preserving all of our future options.

Although I have many noteworthy differences with the Public Service Commission staff, I think they deserve a lot of credit and respect with respect to the consistency of their approach. The PSC staff is very consistent in their approach to utility ratemaking in that they vigorously oppose efforts by utilities to raise rates as well as those of well-intentioned special interest groups seeking to adopt policies that raise utility costs leading to higher customer rates.

The time has come to curtail wind farm welfare:

Wind farms are already receiving more than two cents per kilowatt in production tax credits from the federal government. This translates into more than $20.00 per megawatt for every megawatt of electricity they produce. Wind farms also generate renewable energy credits that can be sold and traded in various markets – generating more revenue for the wind farm. Geographic limitations adopted by the Commission in another provision of these rules restrict the market for those renewable energy credits, driving up their price

to benefit in-state wind generators at a proportional cost to Missouri consumers and limiting broader and potentially more efficient ways to protect the environment.

Now, state law requires Missouri electric utilities to obtain fifteen percent (15%) of the electricity they provide to consumers from renewable sources, primarily wind, and to limit consumer costs in achieving these standards to 1%. The proposed rule as sent to the Secretary of State for publication would allow the Commission to raise rates one percent a year through 2021 and possibly beyond that date if a utility ever does hit the cap and deferral is required.

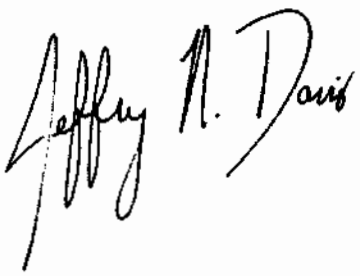
Just because Missouri ratepayers are not paying the federal production tax credit as part of their monthly electric bill to their utility does not mean those of us who are paying taxes are not paying for the subsidy. A true reckoning of the wind welfare costs might well prove as shocking to consumers as the highest rate increase ever proposed by an electric utility in this state. This Commission, when afforded discretion, should draw the line on behalf of customers, not wind farms that generate only a tiny percentage of the electricity on which Missouri utility consumers have come to depend.

Conclusion:

In summary, I believe the proponents of Proposition C and the resulting rule as forwarded for publication have told the voters of Missouri they will pay one price for the renewable electricity required by the law and have now come to the Commission urging us to adopt rules that cost Missouri electric consumers an exponentially higher sum when we are already hearing how many low-income Missourians and senior citizens on fixed income can't afford any rate increase.

The Commission is reaching a point where we need to draw the line as to how much we subsidize renewable energy. I would draw that line by adopting language that would, in effect, put us much closer to a true one percent rate increase as explained in the ballot language presented to voters by the Secretary of State, instead of a ten or eleven percent rate increase that could result from the promulgation of this rule as forwarded for publication. I would also not restrict the purchase of renewable energy credits (RECs) as is proposed in the rule. Safe and adequate service at just and reasonable rates can only be achieved by fairly balancing the interests of utility consumers with the costs of providing services by all utility generators, not a select few seeking to fatten their subsidized purses at the expense of Missouri electric consumers.

Respectfully submitted,



Jeff Davis, Commissioner

Dated at Jefferson City, Missouri
On this 8th day of January 2010.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission amends a rule as follows:

11 CSR 45-4.020 Licenses, Restrictions on Licenses, Licensing Authority of the Executive Director and Other Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1797). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on October 22, 2009, and the public comment period ended on October 22, 2009. No comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission amends a rule as follows:

11 CSR 45-4.190 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1797). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on October 22, 2009, and the public comment period ended on October 22, 2009. At the public hearing individuals/groups were provided the opportunity to express their agreement with or concern about the rules as written. Issues raised at the hearing were essentially the same as those addressed in the letters. Written comments were as follows.

COMMENT #1: William A. Brasher, Legal Counsel, Missouri Gaming Association (MGA) and its casino members are concerned about the amendment to the regulation which imposes on licensees "continuing obligation to demonstrate suitability to hold a license." All licensees are currently required to comply with all statutes and regulations, including the requirements for obtaining and maintaining a gaming license. Additionally, licensees are subject to relicensing on a frequent basis. The proposed amendment, however, imposes an affirmative obligation to "demonstrate suitability" to hold a license without specifying what a licensee must do to "demonstrate suitability." As such, the imposition of an affirmative obligation without specifying what is required is at best, vague, ambiguous, and objectionable.

Given the current licensing/relicensing requirements and power of the Missouri Gaming Commission (commission) to initiate investigations for disciplinary purposes, the proposed amendment to the regulation is unnecessary. MGA and its casino members recommend section 11 CSR 45-4.190(2) be repealed in its entirety.

RESPONSE: Section 313.810.3, RSMo, makes clear, "it is the burden of the applicant to show by clear and convincing evidence his suitability as to character, experience and other factors as may be deemed appropriate by the commission." Throughout the statutes, regulations, and license applications, requirements are set forth from which suitability to hold a commission-issued license is assessed. The purpose of the amendment to this rule is to 1) remove the mandate of a complete investigation to be conducted every six (6) years, and 2) definitively establish a licensee's responsibility to maintain suitability throughout the period of licensure.

COMMENT #2: An email received from Mike Winter, Executive Director of the Missouri Gaming Association, suggested changes to section (2) by adding the phrase "by complying with all gaming laws and regulations" to the license renewal regulation as currently drafted.

RESPONSE AND EXPLANATION OF CHANGE: The commission has no objection to inserting the suggested language into the proposed amendment, as it accomplishes the intent of the proposed amendment; therefore, the rule will be amended accordingly.

11 CSR 45-4.190 License Renewal

(2) Class A, Class B, supplier, and affiliate supplier licensees and the key person, key person business entity, and occupational licensees thereof shall have a continuing obligation to demonstrate suitability to hold a license by complying with all gaming laws and regulations. The commission may reopen the investigation of a licensee at any

time. The licensee shall be assessed fees, if any, to cover the additional costs of the investigation.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission amends a rule as follows:

11 CSR 45-4.200 Supplier's License **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1797–1798). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on October 22, 2009, and the public comment period ended on October 22, 2009. No comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission adopts a rule as follows:

11 CSR 45-4.500 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1798). Those sections 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 was held on this proposed rule on October 22, 2009, and the public comment period ended on October 22, 2009. At the public hearing individuals/groups were provided the opportunity to express their agreement with or concern about the rules as written. Issues raised at the hearing were essentially the same as those addressed in the letters. Written comments from the Missouri Gaming Association (MGA) were as follows.

COMMENT #1: Remove "employee of a Class A or Class B licensee" from the definition of "Agent" in subsection (1)(A). Agent is used throughout these regulations. There needs to be a clear understanding that Class A or Class B licensees are not included in the definition.
RESPONSE AND EXPLANATION OF CHANGE: The Missouri Gaming Commission (commission) agrees with this comment and feels Class A and Class B employees acting as junket representatives are more appropriately addressed in the definition of "Junket representative" within this rule.

COMMENT #2: In subsection (1)(D), remove "or the direct or indirect provision of a product, service or item without charge or for less than full value" as this is a comp rather than compensation. For example, if a junket representative that is not yet licensed in the state of Missouri wants to visit a location to determine whether or not they want to become licensed to operate in our jurisdiction, a casino would likely cover the representative's expenses associated with the trip in an effort to generate new business in our jurisdiction. The proposed language would not allow this, which removes an essential recruiting tool.
RESPONSE: The commission disagrees; anything of monetary value a licensed representative receives for performing his/her job functions should be considered compensation. The argument that it would not allow providing complimentaries to an unlicensed junket representative is not valid because the rules only apply to those who hold a commission-issued license; therefore, the commission does not feel any change to this section of the proposed rule is warranted.

COMMENT #3: In subsection (1)(G), the definition of "Junket" is too broad and should be limited to transactions arranged by a junket enterprise or representative to be considered a junket to avoid inclusion of in-house transactions such as direct mail promotions for travel reimbursement or seat blocks. In addition, a size restriction needs to be included in the definition. Upon review of current contract terms, a group of less than ten (10) is typically paid as an individual or splinter. Splinters should not be encompassed.
RESPONSE AND EXPLANATION OF CHANGE: A junket occurs when one (1) person or a group is solicited to come to a Class B licensee's premises for the purpose of gambling and any or all of the cost of transportation, food, lodging, and entertainment for said person is paid by a licensee, or employee or agent thereof. Direct mail promotions are not included in the definition. The commission will, however, include in the definition the requirement the patron contact be made by a junket representative.

COMMENT #4: While the definition of "junket enterprise" in subsection (1)(H) excludes both Class A and Class B licensees, the definition of "junket representative" in subsection (1)(I) appears to exclude only Class B licensees. As proposed, corporate employees of the Class A licensee not licensed in Missouri would be considered a junket representative. This would be a concern for employees at a property located in another state when they send groups to a sister property in Missouri. Under the proposed definition, these out-of-state employees would be required to obtain a Missouri gaming license. From our earlier discussion, it is our understanding it is intended that both Class A and Class B licensees be excluded. We would ask that the regulation clearly reflect the intent not to include these employees.
RESPONSE AND EXPLANATION OF CHANGE: The commission does not wish to include licensed employees of Class B licensees or employees of the Class A licensee who receive no compensation either directly or indirectly from a junket enterprise or junket representative. The commission will amend the proposed definition to clearly exclude those individuals.

COMMENT #5: In 11 CSR 45-4.530, MGA requested a clearer definition of "actual gaming activity."
RESPONSE AND EXPLANATION OF CHANGE: The commission's intent is that compensation of "actual gaming activity" be based upon theoretical win; therefore, 11 CSR 45-4.530(1)(A) will be amended to reflect the approved compensation methodology. Additionally, a definition of "theoretical win" will be added to 11 CSR 45-4.500(1)(J).

11 CSR 45-4.500 Junket, Junket Enterprises, Junket Representatives—Definitions

(1) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(A) "Agent" means any person, including a junket representative, junket enterprise, or employee thereof acting as a junket representative, acting directly or indirectly on behalf of a Class A or Class B

licensee or its affiliate.

(G) "Junket" means an arrangement made by and between a junket enterprise or junket representative and a Class A or Class B licensee the purpose of which is to induce any person, selected or approved for participation therein on the basis of the person's ability to satisfy a financial qualification obligation related to the person's ability or willingness to gamble or on any other basis related to the person's propensity to gamble to come to a Class B licensee's premises for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging, and entertainment for said person is directly or indirectly paid by a licensee or employee or agent thereof.

(I) "Junket representative" means any person who negotiates the terms of, engages in the referral, procurement, or selection of persons who may participate in a junket to a Class B licensee's premises. A Class A or Class B licensee's employee who holds a commission-issued occupational license or a Class A licensee's employee who receives no compensation either directly or indirectly from a junket enterprise or junket representative whether or not said junket enterprise or junket representative holds a commission-issued license, and who performs the functions of a junket representative for the Class A or Class B licensee by which employed is not deemed a junket representative.

(J) "Theoretical win" means a Class B licensee's estimated win per customer based upon the customer's rated table and/or slot gaming activity. Table game theoretical equals average bet × length of gaming activity × decisions per hour × house advantage. Electronic gaming device (slot machine) theoretical equals coin or cash in × machine hold percentage.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission adopts a rule as follows:

11 CSR 45-4.510 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1798–1800). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed rule on October 22, 2009, and the public comment period ended on October 22, 2009. Issues raised at the hearing were essentially the same as those addressed in the letters. Written comments were as follows.

COMMENT #1: John Payne, President, Central Division, Harrah's Entertainment, stated, as I learned yesterday, the Missouri Gaming Commission (commission) is proposing that each junket representative would be required to pay a ten thousand dollar ($10,000) application fee and a background investigation fee ranging anywhere from ten thousand dollars to fifty thousand dollars ($10,000–$50,000). If this were to pass, very few (if any) junket representatives would do business in Missouri, and our new air service would stop operating. As these sales representatives work on commission, they simply could not afford to be licensed in Missouri. Other states do require a similar licensing process; however, not at this magnitude of cost that is being proposed.

COMMENT #2: Gary Hanauer, Independent Junket Representative, Grueninger Travel Services of Fort Wayne, expressed opposition to the fee structure in an unprofessional manner.

RESPONSE: Missouri statutes provide the commission the authority to license operators of excursion gambling boats, occupations within excursion gambling boat operations, and suppliers. Supplier license requirements best fit the activities performed by junket enterprises, thus the reason for placing them within the definition of suppliers. The representatives themselves fall within the occupational license requirements. Amendments to the fee structure for junket enterprises licensed as suppliers will be submitted; the type of license, however, shall remain that of a supplier. Therefore, no change to the proposed rule is warranted.

COMMENT #3: The commission staff requested section (4) be changed to clearly explain the licensees' responsibilities with regard to their licenses.

RESPONSE AND EXPLANATION OF CHANGE: The commission, after consideration of comments, determined certain clarifications to the proposed rule concerning the display of license badges were warranted.

11 CSR 45-4.510 Junket Enterprise; Junket Representative—Licensing Requirements

(4) Junket enterprise employees and junket representatives required to hold commission-issued key person or occupational licenses shall, at all times when on the premises of a Class B licensee performing the duties and functions for which licensed, have on their person their valid commission-issued occupational license badge and present said license upon the request of any agent of the commission or casino licensee.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission adopts a rule as follows:

11 CSR 45-4.520 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1801). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed rule on October 22, 2009, and the public comment period ended on October 22, 2009. Issues raised at the hearing were essentially the same as those addressed in the letters. Written comments were as follows.

COMMENT #1: The Missouri Gaming Association (MGA) stated, from an earlier discussion, we would suggest the caption be reworded as "criteria to be considered a junket" rather than "patron selection." The industry is in support of language preventing every bus load visiting a casino from being classified as a junket. However, we feel that categorizing the regulation as "patron selection" could unintentionally hinder a casino's ability to use criteria other than "propensity to gamble" to select a patron to participate in a junket.

RESPONSE AND EXPLANATION OF CHANGE: This rule provides a patron selected according to established criteria is a part of a junket and, conversely, if selected by criteria other than that established is not part of a junket. The commission has no issue with

adding verbiage to clarify this position.

11 CSR 45-4.520 Junket Arrangements—Criteria by Which Patrons Selected Determinant of Junket

PURPOSE: This rule establishes criteria used to select patrons are determinate of whether or not an arrangement constitutes a junket.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission adopts a rule as follows:

11 CSR 45-4.530 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1801–1802). Those sections 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 was held on this proposed rule on October 22, 2009, and the public comment period ended on October 22, 2009. Issues raised at the hearing were essentially the same as those addressed in the letters. Written comments from the Missouri Gaming Association (MGA) were as follows.

COMMENT #1: Although the language in section (1) limits an agent or employee to that of a junket enterprise and/or representative, please note our previous concern in subsection 11 CSR 45-4.500(1)(A) where an "employee of a Class A or Class B license" is included in the definition of "Agent."
RESPONSE: This comment was addressed in 11 CSR 45-4.500.

COMMENT #2: Although "casino win" is included in subsection (1)(A), we would request a clearer definition of "actual gaming activity."
RESPONSE AND EXPLANATION OF CHANGE: The Missouri Gaming Commission's (commission's) intent is that compensation be based upon "theoretical win"; therefore, subsection (1)(A) will be amended to reflect the approved compensation methodology. Additionally, a definition of "theoretical win" will be added to 11 CSR 45-4.500.

COMMENT #3: The language in subsections (1)(C) and (1)(D) could inadvertently affect bus operators. We would suggest an exemption or additional language be added, which clearly indicate they are not covered under the regulations.
RESPONSE: Bus drivers would only be affected if they meet the definition of a junket enterprise or junket representative and if patrons are selected based upon the criteria set forth in 11 CSR 45-4.520. In those cases, the policies and prohibitions of this rule should apply.

COMMENT #4: Also in subsection (1)(C), remove "or gratuity" and add language to clarify that additional services can be offered for an additional fee if disclosed in the contract or submitted writing to the commission.
RESPONSE AND EXPLANATION OF CHANGE: The commission believes receipt and acceptance of gratuities to be an acceptable practice; however, solicitation of gratuities should be prohibited. Subsection (1)(C) does not address or prohibit additional services; it prohibits fees, charges and gratuities being solicited, received or accepted from patrons for the privilege of participating in a junket or for the performance of the functions for which licensed. The functions for which licensed are the negotiation, referral and procurement of patrons to participate in a junket, functions for which a junket enterprise and junket representative are paid by a Class A or Class B licensee. Patrons should not pay for these functions. The rule will be reworded to allow for the receipt of gratuities.

COMMENT #5: The proposed language in subsection (1)(D) is extremely problematic as it is contrary to how this business operates. The regulation indicates services and items of value cannot be provided unless otherwise disclosed to and approved in writing by the commission. For representatives that travel with patrons on junket trips, the representative caters to the very-important-person (VIP) guests and in most cases covers the cost of what these guests need or want. With that said, a representative cannot foresee what guests need or want. We would request the regulation be modified to allow junket representatives to provide services and items of value not included on the contract as long as they are disclosed in the final report.
RESPONSE AND EXPLANATION OF CHANGE: The commission, after consideration of the comment, will appropriately amend the rule.

COMMENT #6: The proposed language in subsection (1)(J) prohibiting a junket representative to participate in a gambling game in the establishment where the junket enterprise, junket representative, agent or employee thereof, is engaged in a junket arrangement is a key concern. Most junket representatives travel and participate with their groups, which may include gambling and socializing. This is common in the industry. However, the proposed rules seem to improperly categorize junket representatives as employees of the gaming industry having access to critical systems and assets or performing duties that could affect the outcome of a gambling game. Adopting this language could prove to be a major deterrent to fostering this business in Missouri.
RESPONSE AND EXPLANATION OF CHANGE: The commission, after dialogue with the industry and consideration of the comment, will remove subsection (1)(J) from the proposed rule.

COMMENT #7: We would also suggest removing the portion of regulation found in section (2) that limits a junket representative's employment to one (1) junket enterprise at a time. As with most contracted labor, it is probably not uncommon for a representative to work for more than one (1) company as an independent contractor. As drafted, this would be prohibited.
RESPONSE: This requirement is within the regulations of other gaming jurisdictions; therefore, the commission feels there is ample rationale for the requirement to remain in the proposed rule.

11 CSR 45-4.530 Junket Enterprise; Junket Representative; Agents; Employees—Policies and Prohibited Activities

(1) A junket enterprise, junket representative, or agent or employee thereof, shall not—

(A) Be compensated on any basis other than theoretical win unless specifically approved in writing by the commission;

(C) Solicit, receive, or accept any fee or service charge, or solicit any gratuity from a patron for the privilege of participating in a junket or for the performance of the functions for which licensed;

(D) Pay for services, including transportation or other items of value, provided to or for the benefit of any patron participating in a junket, unless disclosed in writing to the Class B licensee for which the junket was arranged;

(H) Conduct advertising and public relations activities in a manner other than with decency, dignity, good taste, and honest and fair representation; or

(I) Cater to, assist, employ, or associate with, either socially or in business affairs, persons of notorious or unsavory reputation or who

have felony police records or the employing either directly through a contract or other means, of any firm or individual in any capacity where the repute of the state of Missouri or the gaming industry is liable to be damaged because of the unsuitability of the firm or individual.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission adopts a rule as follows:

11 CSR 45-4.540 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1802). Those sections 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 was held on this proposed rule on October 22, 2009, and the public comment period ended on October 22, 2009. Issues raised at the hearing were essentially the same as those addressed in the letters. Written comments from the Missouri Gaming Association (MGA) follow in comments #1 through #9.

COMMENT #1: In paragraph (1)(B)1., we would prefer language that states termination as of the date of notification rather than the date of denial in consideration of timing delays that could occur between the date of denial and the date of notification. We would like language added to provide a thirty (30)-day notification prior to an event in consideration that most contracts require a two (2)-week cancellation notice at a minimum. If a property has to cancel events due to a Missouri Gaming Commission (commission) denial at the last minute, the property could face costs due to breach of contract as well as the inability to backfill slots.
RESPONSE: Termination as of the date of denial is common contract language, typically including a statement stipulating such occurrence shall not be deemed default under the provisions of the agreement. Further, indemnification and termination articles within a contract include language to the effect a Class A or Class B licensee can terminate an agreement for cause, which includes the denial, termination, revocation, suspension, or discipline of any license a junket enterprise or junket representative is required to obtain and maintain from the commission. Therefore, the commission does not feel a change in the proposed rule is warranted.

COMMENT #2: Several of the following comments pertain to scheduling concerns. In summary, we believe it may be a better process, in light of the frequency of changes that accompany junket activities, to provide an initial schedule and a final report. Scheduling changes and the information included in the arrival report is also included in the final report. We believe this process would allow the commission to receive the information it needs in a timely manner without being burdened with numerous updates prior to the group's arrival.
RESPONSE AND EXPLANATION OF CHANGE: Having considered the comments and input from the industry, the commission believes combining the arrival report and final report prudent and will amend the proposed rule appropriately.

COMMENT #3: Please provide some clarification on what is expected with the use of the phrase "certified by an employee" found in subsections (2)(C) and (3)(D).
RESPONSE AND EXPLANATION OF CHANGE: Rather than "certified by an employee," the proposed rule will be amended to "prepared and signed by an employee."

COMMENT #4: With regard to paragraphs (2)(C)2.–4., changes occur on a regular basis as mentioned in subsection (2)(B) including the number of participants. It is more realistic to provide the number of seats that have been slotted for an event rather than the exact number of participants, which is typically not known until after they arrive and have been picked-up. It is not uncommon for patrons to back out last minute or miss a flight, etc. Furthermore, if a block of seats does not fill up as anticipated, every effort is made to do so to the last minute. With regard to arrival and departure times, keep in mind they change regularly, which we have no control over.
RESPONSE AND EXPLANATION OF CHANGE: The information required in the schedule is necessary for planning purposes. The commission believes it important the agents know in advance when junkets are to arrive, the approximate number of participants, etc. While the information provides important planning data, it does not have to be exact; therefore, the rule will be amended to reflect such.

COMMENT #5: With regard to subsection (2)(D), we noted it is problematic to provide constant updates to the junket schedules by the next business day. The requirement to file this information seems redundant since the same information is required on the arrival report as well.
RESPONSE AND EXPLANATION OF CHANGE: As stated above, the commission believes combining the arrival report and final report prudent; therefore subsection (2)(D) will be deleted from the rule.

COMMENT #6: In response to subsection (3)(B), it is not uncommon to provide additional seating for guests of a very-important-person (VIP). When this occurs, the only available information we would have is what is required by the airline, which is first and last name.
RESPONSE: If the guests of a VIP are part of a junket, they should be included on the junket manifest provided by the junket enterprise or junket representative. The manifest provided by the junket enterprise or junket representative shall include the name and address of the junket participants.

COMMENT #7: With regard to subsection (3)(C), in previous regulations, it appears as though information to be included is not optional to avoid being in violation. However, this language appears to provide leniency to provide certain information at a later date if it is not initially available. We are asking for some further clarification on this provision.
RESPONSE: This provision recognizes changes occur prior to the junket arriving at the Class B licensee's premises, and provides the opportunity for information to be updated.

COMMENT #8: In subsection (3)(E), please provide further clarification on how long these records must be stored on-site. The standard for other gaming records is on-site storage for one (1) year followed by off-site storage with a three (3)-day delivery request. We would suggest these documents be treated the same as other document and retention policies presently in place by the commission.
RESPONSE AND EXPLANATION OF CHANGE: The commission will amend the wording of the rule to require records be maintained in compliance with 11 CSR 45-8.040 and made available to the commission upon request.

COMMENT #9: As mentioned in 11 CSR 45-4.540(3)(E), the expectation in subsection (4)(B) of maintaining these records on premises is different than other document retention policies of the commission. We would again request this provision be made consistent with other similar record policies.

RESPONSE AND EXPLANATION OF CHANGE: The commission will amend the wording of the rule to require records be maintained in compliance with 11 CSR 45-8.040 and made available to the commission upon request.

COMMENT #10: John Payne, President, Central Division, Harrah's Entertainment, suggested a second proposed change is a requirement to have the manifest of guest names for each junket flight no later than thirty (30) days from arrival. This proposal would be impossible to execute as our guests' schedules change daily and most of the time we do not know who will be on the plane until the day of the trip which is no different than a commercial airline. I think providing the commission a manifest on the day of arrival is very fair and realistic.
RESPONSE: The proposed rule does not require a junket manifest be provided thirty (30) days in advance of arrival; it requires a manifest be provided on the day of arrival.

11 CSR 45-4.540 Junket—Agreements, Schedules, and Final Reports

(2) Junket schedules shall be—

(B) Filed with the commission by a Class B licensee by the fifteenth day of the month preceding the month in which the junket is scheduled to arrive at the Class B licensee's premises. If a junket is arranged after the fifteenth day of the month preceding the arrival of the junket, an amended schedule shall be filed by the Class B licensee by the close of the next business day after the junket is so arranged; and

(C) Prepared and signed by an employee of the Class B licensee and shall include the following:

1. The origin of the junket;
2. The estimated number of participants in the junket or the number of seats blocked;
3. The anticipated arrival time and date of the junket;
4. The anticipated departure time and date of the junket; and
5. The name and license number of all junket representatives and the name and license number of all junket enterprises involved in the junket.

(3) Junket final reports shall:

(A) Be prepared by a Class B licensee for each junket engaged in or on its premises for which the Class B licensee was required to prepare a junket schedule;

(B) Include a junket manifest listing the names and addresses of the junket participants;

(C) Include information required under "Junket Schedules" that has not been previously provided to the commission in a junket schedule pertaining to a particular junket, or an amendment thereto;

(D) Include the actual amount of complimentary services, accommodations, and items provided to each junket participant;

(E) Include the total amount for services or other items of value provided to or for the benefit of a patron participating in the junket which were paid for by the junket enterprise, junket representative, or agent or employee thereof and disclosed in writing to the Class B licensee in compliance with 11 CSR 45-4.530;

(F) Be prepared and signed by an employee of the Class B licensee; and

(G) Be prepared within seven (7) days of the completion of the junket, maintained in compliance with 11 CSR 45-8.040, and made immediately available to the commission upon request.

Under section 536.022, RSMo 2000, if any rule or portion of a rule is suspended or terminated by action of the general assembly, the governor, a court, or other authority, the state agency promulgating the rule must immediately file a notice of such action with the secretary of state. This notice is published as soon as practicable in the *Missouri Register* under this heading.

If any action is taken which changes this information contained in a prior notice, a new notice must be filed and published in the same manner as the original.

Material regarding suspended and terminated rules shall appear in the *Code of State Regulations*, and terminated rules may be removed.

Title 18—PUBLIC DEFENDER COMMISSION
Division 10—Office of State Public Defender
Chapter 2—Definition of Eligible Cases

RULE ACTION NOTICE

AFFECTED RULE: **18 CSR 10-2.010 Definition of Eligible Cases**

FORM OF ACTION: Relators Missouri Public Defender Commission, J. Marty Robinson, and Wayne Williams petitioned the Supreme Court of Missouri to prohibit the Twenty-Fourth Judicial Circuit from appointing the office of the state public defender to represent an indigent defendant who had previously retained private counsel in contravention of the duly promulgated administrative rule denying eligibility for defendants who at anytime during the pendency of their cases retained private counsel.

ACTION TAKEN: On December 24, 2009, the Missouri Supreme Court, in *STATE ex rel. MISSOURI PUBLIC DEFENDER COMMISSION, J. MARTY ROBINSON, AND WAYNE WILLIAMS, Relators, v. THE HONORABLE KENNETH W. PRATTE, Respondent*, 298 S.W.3d 870 (Mo banc 2009), struck down certain provisions of the rule that permitted the public defender to deny representation to defendants who at anytime during the pendency of their cases retained private counsel. The court invalidated sections 18 CSR 10-2.010(2) and (3).

INFORMATION: For further information regarding this action, please contact Daniel Gralike, Office of the State Public Defender, 1000 W. Nifong, Building 7, Columbia, Missouri 65201. Office telephone number: 1-573-882-9855; email address: dan.gralike@mspd.mo.gov.

Title 18—PUBLIC DEFENDER COMMISSION
Division 10—Office of State Public Defender
Chapter 4—Rule for the Acceptance of Cases and Payment of Private Counsel Litigation Costs

RULE ACTION NOTICE

AFFECTED RULE: **18 CSR 10-4.010 Rule for the Acceptance of Cases and Payment of Private Counsel Litigation Costs**

FORM OF ACTION: Relators Missouri Public Defender Commission, J. Marty Robinson, and Kevin O'Brien petitioned the Supreme Court of Missouri to prohibit judges of the Thirteenth Judicial Circuit from appointing the office of the state public defender to certain criminal cases in contravention of the duly promulgated administrative rule limiting the Thirteenth Judicial Circuit power to do so due to excessive public defender caseloads in that circuit.

ACTION TAKEN: On December 24, 2009, the Missouri Supreme Court, in *STATE ex rel. MISSOURI PUBLIC DEFENDER COMMISSION, J. MARTY ROBINSON, AND KEVIN O'BRIEN, Relators, v. THE HONORABLE GENE HAMILTON and THE HONORABLE GARY OXENHANDLER, Respondents*, 298 S.W.3d 870 (Mo banc 2009), ruled that the public defender commission may not limit availability of public defender district offices by category of case, [that] "the rule authorizes the public defender to make the office unavailable for any appointments until the caseload falls below the commission's standard." Subsection 18 CSR 10-4.010(2)(E) is voided by the court's ruling.

INFORMATION: For further information regarding this action, please contact Daniel Gralike, Office of the State Public Defender, 1000 W. Nifong, Building 7, Columbia, Missouri 65201. Office telephone number: 1-573-882-9855; email address: dan.gralike@mspd.mo.gov.