IN THE SUPREME COURT OF MISSOURI

Earth Island Institute d/b/a Renew Missouri,	)	
Appellant,	)	
vs.	)	Case No. SC93944
The Empire District Electric Company, et al.,	)	
Respondents.	)	

RESPONDENT'S BRIEF
OF THE EMPIRE DISTRICT ELECTRIC COMPANY

ON WRIT OF REVIEW
FROM THE MISSOURI PUBLIC SERVICE COMMISSION

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JURISDICTIONAL STATEMENT

This case involves the judicial review, pursuant to RSMo. §386.510, of the *Order Denying Motion for Summary Determination of Renew Missouri and Granting Motions to Dismiss of Ameren Missouri and Empire* issued on November 26, 2013, effective December 26, 2013 (the "Commission's Order"), by the Missouri Public Service Commission (the "Commission") in its Case No. EC-2013-0377, a complaint case brought by Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), and others, against The Empire District Electric Company ("Empire").

This case is subject to the general appellate jurisdiction of the Court of Appeals pursuant to Article V, §3 of the Missouri Constitution. Appellant Renew Missouri seeks review in this Court, asserting that the validity of a statute is in issue and that, therefore, this Court has appellate jurisdiction under Article V, §3. Renew Missouri does not attack the validity or constitutionality of the statutes defining the powers of the Commission, and the real issue in this appeal is whether or not the Commission's Order is lawful and reasonable. The Court of Appeals has authority to construe statutes for that purpose. *See State ex rel. Doniphan Telephone Co. v. Public Service Commission*, 369 S.W.2d 572 (Mo. 1963); *see also State ex rel. Missouri-Kansas-Texas Railroad Company v. Public Service Commission*, 378 S.W.2d 459 (Mo. 1964).

POINTS AND AUTHORITIES RELIED ON

I. THE COMMISSION'S ORDER IS LAWFUL AND REASONABLE AND THE COMMISSION DID NOT ERR IN DENYING RENEW MISSOURI'S CLAIM, BECAUSE EMPIRE IS ENTITLED TO RELY ON THE SOLAR EXEMPTION PROVIDED FOR IN RSMO. §393.1050 AND IS EXEMPT FROM THE SOLAR REQUIREMENTS FOUND IN PROPOSITION C, RSMO. §§393.1020-393.1035, IN THAT THE ENACTMENT OF RSMO. §393.1050 BY THE LEGISLATURE DID NOT UNLAWFULLY CHANGE THE QUESTION TO BE PUT TO THE VOTERS THROUGH PROPOSITION C. (Responds to Renew Missouri's Point I)

Mo. Const. Art. III, §49

RSMo. §393.1030

RSMo. §393.1050

State ex rel. Drain v. Becker, 240 S.W. 229 (Mo. 1922)

II. THE COMMISSION'S ORDER IS LAWFUL AND REASONABLE AND THE COMMISSION DID NOT ERR IN DENYING RENEW MISSOURI'S CLAIM, BECAUSE EMPIRE IS ENTITLED TO RELY ON THE SOLAR EXEMPTION PROVIDED FOR IN RSMO. §393.1050 AND IS EXEMPT FROM THE SOLAR REQUIREMENTS FOUND IN PROPOSITION C, RSMO. §§393.1020-393.1035, IN THAT §393.1050 AND PROPOSITION C ARE NOT IN IRRECONCILABLE CONFLICT AND THE PASSAGE OF PROPOSITION C DID NOT IMPLIEDLY REPEAL RSMO. §393.1050. (Responds to Renew Missouri's Point II)

RSMo. §393.1030

RSMo. §393.1050

Berdella v. Pender, 821 S.W.2d 846 (Mo. banc 1991)

Evans v. Empire District Electric Company, 346 S.W.3d 313 (Mo.App. W.D. 2011)

State ex rel. City of Jennings v. Riley, 236 S.W.3d 630 (banc 2007)

III. THE COMMISSION'S ORDER IS LAWFUL AND REASONABLE AND THE COMMISSION DID NOT ERR IN DENYING RENEW MISSOURI'S CLAIM, BECAUSE EMPIRE IS ENTITLED TO RELY ON THE SOLAR EXEMPTION PROVIDED FOR IN RSMO. §393.1050 AND IS EXEMPT FROM THE SOLAR REQUIREMENTS FOUND IN PROPOSITION C, RSMO. §§393.1020-393.1035, IN THAT RSMO. §393.1050 IS NOT AN UNLAWFUL SPECIAL LAW. (Responds to Renew Missouri's Point III)

Mo. Const. Art. V, §40

RSMo. §393.1050

Harris v. The Missouri Gaming Commission, 869 S.W.2d 58 (Mo. 1994)

Jefferson County Fire Protection Districts Assn. v. Blunt, 205 S.W.3d 866 (Mo. banc 2006)

State ex rel. Public Defender Commission v. County Court of Greene County, 667 S.W.2d 409 (Mo. 1984)

STANDARD OF REVIEW APPLICABLE TO ALL POINTS

RSMo. §§386.510 and 386.540 set forth the exclusive procedure for judicial review of Commission decisions. In an administrative appeal such as this, the role of the reviewing court is to "determine whether the [Commission's] order is lawful and reasonable." *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 954 S.W.2d 520, 528 (Mo.App. W.D. 1997).

The lawfulness of a Commission decision turns on whether the Commission "had the statutory authority to act as it did." *State ex rel. Mobile Home Estates, Inc. v. Public Service Commission*, 921 S.W.2d 5, 9 (Mo.App. W.D. 1996). The Commission "has been given the statutory authority to interpret statutes pursuant to the administration of their charge," and the Commission's statutory interpretation must be given "great weight" by a reviewing court. *Evans v. Empire District Electric Company*, 346 S.W.3d 313, 318 (Mo.App. W.D. 2011). When the Commission is confronted with a new or amended statute, as was the case in the subject complaint proceeding, the Commission "must take that statute and interpret its meaning and application to the facts at hand." *Id.*

The reasonableness of a Commission decision hinges on whether it is "supported by competent and substantial evidence upon the whole record; whether it was arbitrary, capricious, or unreasonable; or whether the PSC abused its discretion." *State ex rel. Inter-City Beverage Co., Inc. v. Public Service Commission*, 972 S.W.2d 397, 401 (Mo.App. W.D. 1998); *see also State ex rel. City of St. Louis v. Public Service Commission*, 47 S.W.2d 102, 104 (Mo. 1932).

ARGUMENT

Renew Missouri asserts three points in this appeal, each alleging that the Commission erred in denying Renew Missouri's claim as set out in Count III of its Complaint against Empire. In its Point I, Renew Missouri asserts that the passage of RSMo. §393.1050 violated the people's right to enact legislation independently and "changed the question" to be submitted to the voters through Proposition C. With Point II, Renew Missouri asserts that §393.1050 and Proposition C are in irreconcilable conflict and that the passage of Proposition C impliedly repealed RSMo. §393.1050. In its Point III, Renew Missouri argues that RSMo. §393.1050 is an invalid special law. These are the same three points argued by Renew Missouri before the Commission.

The Commission correctly determined that Empire is entitled to rely on the solar exemption provided for in RSMo. §393.1050 and is, therefore, exempt from the solar requirements found in Proposition C, RSMo. §§393.1020-393.1035. As such, Empire urges this Court to issue its opinion affirming the Commission's Order in all respects. The decisions of the Commission as set forth in the Order are lawful and reasonable, and the arguments of Renew Missouri to the contrary are without merit.

I. The Commission's Order is lawful and reasonable and the Commission did not err in denying Renew Missouri's claim, because Empire is entitled to rely on the solar exemption provided for in RSMo. §393.1050 and is exempt from the solar requirements found in Proposition C, RSMo. §§393.1020-393.1035, in that the enactment of RSMo. §393.1050 by the Legislature did not unlawfully change the

question to be put to the voters through Proposition C. (Responds to Renew Missouri's Point I)

Renew Missouri does not dispute that the Missouri General Assembly may repeal or modify a law enacted through the initiative petition process, and Renew Missouri does not dispute that the Missouri General Assembly may act on other, related aspects of an issue subject to a pending initiative. Renew Missouri, however, argues that RSMo. §393.1050 was an attempt to modify or repeal Proposition C and that the Missouri General Assembly may repeal or modify an initiative only after it is passed, and not while it is in the process of enactment. Renew Missouri cites *State ex rel. Drain v. Becker*, 240 S.W. 229 (Mo. banc 1922), and two Oklahoma decisions as purported support for this argument.

Proposition C, specifically §393.1030, establishes renewable portfolio standards for Missouri's electric utilities and requires that each electric utility, by no later than the year 2021, purchase or generate no less than fifteen percent of the electricity it sells from renewable resources. Section 393.1050 provides as follows:

> Notwithstanding any other provision of law, any electrical corporation as defined by subdivision 15 of section 386.020 which, by January 20, 2009, achieves an amount of eligible renewable energy technology nameplate capacity equal to or greater than fifteen percent of such corporation's total owned fossil-fired generating capacity, shall be exempt thereafter from a requirement to pay any installation subsidy, fee, or rebate to its customers that install their own solar electric energy system and shall be exempt from

> meeting any mandated solar renewable energy standard requirements. Any disputes or denial of exemptions under this section may be reviewable by the circuit court of Cole County as prescribed by law.

With the enactment of RSMo. §393.1050, the Legislature did not attempt to expressly or impliedly repeal §393.1030 or any other section of Proposition C. In fact, §393.1050 does not in any way modify the portfolio standards established by Proposition C. Instead, §393.1050 provides for a related exemption for electric utilities purchasing or generating no less than fifteen percent of their electricity from renewable resources by the year 2009 – twelve years earlier than required by Proposition C. Further, the related exemption created by §393.1050 applies to "*any* installation subsidy, fee, or rebate" and to "*any* mandated solar renewable energy standard requirements" – not only to requirements created by Proposition C. RSMo. §393.1050 (emphasis added). Again, Renew Missouri concedes that the Legislature may act on related aspects of an issue that is the subject of a pending initiative so long as it does not interfere with the pending initiative.

By enacting §393.1050, the Legislature did not "change the question" to be put to the voters through Proposition C. Even if one assumes that did occur, however, the Court's 1922 decision in *Drain* does not require the reversal of the Commission's Order. The *Drain* decision is distinguishable in many respects. First, *Drain* involved a proceeding in mandamus – not an appeal challenging the lawfulness and reasonableness of a Commission decision. *State ex rel. Drain v. Becker*, 240 S.W. 229 (Mo. 1922). Second, *Drain* involved action by the Legislature, "the purpose of which was to *repeal*

the referred act." *Id.* at 230 (emphasis added). As noted, §393.1050 did not attempt to repeal Proposition C, but, instead, created a related solar exemption.

Additionally, and quite significantly, the facts underlying *Drain* involved an attempt by the Missouri General Assembly to repeal a pending citizen-initiated referendum. Consequently, the holdings in *Drain* apply only to statutes that are subject to the referendum process. Although the rights to enact or repeal laws through initiative or referendum are both guaranteed by Article 3, §49 of the Missouri Constitution, those two rights differ materially. As noted in *Drain*, the referendum process requires very specific timing:

> The people cannot refer a measure until it has been adopted by the General Assembly and signed by the Governor, and only lacks the required efflux of time to become a law. On the other hand, the General Assembly, after the right of reference has been invoked, cannot interfere with a referred measure by the passage of another on the same subject until after the one referred has been voted upon by the people and their power in that respect exhausted.

Id at 232.

The initiative process allows citizens to enact laws independent of the General Assembly, while referendum is the process through which citizens may affirm or reject laws previously enacted by that same body. In *Drain*, the court confronted only the question of whether the General Assembly could act on legislation that is subject to a referendum during the period that precedes the referendum election. The court concluded

that once the people invoke their right to a referendum – which, in essence, is the right of citizens to pass judgment on legislation already adopted by both houses of the General Assembly – the legislature is powerless to modify or repeal that legislation until the people have had their say. The legal principle adopted by the court in *Drain* is analogous to the well-established rule that prohibits administrative agencies and lower courts from taking action on matters while those matters are on appeal.

In contrast, initiative does not involve citizens passing judgment on laws previously approved by the legislature. Instead, initiative gives citizens the same authority as the General Assembly to propose and pass laws. Moreover, there is nothing in the constitution that suggests or requires that the independent legislative powers of citizens and the General Assembly must be performed serially. In fact, the section of the Missouri Constitution that reserves to citizens the power of initiative specifically states that the peoples' initiative authority is "independent of the general assembly." Missouri Constitution, Art. 3, §49. That same phrase, however, does not apply to the authority to approve or reject legislative acts through referenda.

Although there is language in *Drain* that may be read to suggest that the holding prohibiting the General Assembly from exercising certain legislative powers during the pendency of a referendum also applies to initiatives, that language is, at best, mere *dicta*. The court's holdings in *Drain* only apply to and limit the General Assembly's powers during the pendency of a referendum, and Empire and Renew Missouri (Appellant's Brief, p. 18) have been unable to find a single Missouri appellate court decision since *Drain* extending the *Drain* holdings to the initiative process.

Turning to initiative cases outside of Missouri, Renew Missouri points to *In re Initiative Petition No. 347, State Question No. 639*, 813 P.2d 1019 (Okla. 1991), and *Oklahoma Tax Commission v. Smith*, 610 P.2d 794 (Okla. 1980). The 1991 decision does not reach the point, with the Oklahoma court holding as follows:

> If Senate Bill 711 is ultimately held to directly change the effect of a pending initiative petition *Oklahoma Tax Commission v. Smith*, *supra*, would be applicable. If not, that issue does not require this Court's present attention. Due to the indeterminate nature of this question at this time and in the light of the severability provisions in the initiative petition, judicial restraint is appropriately exercised in regard to this issue at this time.

The 1980 Oklahoma decision also does not support Renew Missouri's arguments. The lower court found the legislative action to be unlawful, relying on an Oklahoma appellate decision which had relied heavily on Missouri's *Drain* decision. *Smith*, 610 P.2d at 806. The Supreme Court of Oklahoma, however, reversed, finding, in part, as follows:

> The Legislature could not change the initiative question proposed by 539. The House Bill 1484 did not change the question initiated however, but simply amended a separate taxation statute. Both acts encompassed the same subject. Had both passed they would have both constituted positive law, and in the case of irreconcilable conflict, the act passed last would be determinative.

Id. at 806-807. This Oklahoma holding in *Smith* leads into Renew Missouri's second point.

II. The Commission's Order is lawful and reasonable and the Commission did not err in denying Renew Missouri's claim, because Empire is entitled to rely on the solar exemption provided for in RSMo. §393.1050 and is exempt from the solar requirements found in Proposition C, RSMo. §§393.1020-393.1035, in that §393.1050 and Proposition C are not in irreconcilable conflict and the passage of Proposition C did not impliedly repeal RSMo. §393.1050. (Responds to Renew Missouri's Point II)

Renew Missouri notes that Proposition C applies to all electrical corporations and that §393.1050 creates an exception. Renew Missouri then jumps to the illogical conclusion that "(t)he two statutes cannot coexist; they are in inescapable conflict." (Appellant's Brief, p. 21) Renew Missouri's Point II is based on two assumed premises. First, Renew Missouri contends that the solar exemption granted by §393.1050 is inconsistent with, and therefore repugnant to, Proposition C. Second, Renew Missouri contends that because §393.1050 was passed and took effect before Proposition C, the latter statute repeals the former. Neither premise is supported by applicable case law.

When two statutory provisions covering the same subject matter are unambiguous standing separately, but in apparent conflict when considered together, a reviewing court must attempt to harmonize them and give effect to both whenever possible. *South Metropolitan Fire Protection Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 666 (Mo. banc 2009). Where one statute deals with a subject in general and comprehensive terms, while another statute deals with part of the same subject in a more minute and definite way, the two should be read together and harmonized whenever possible; the special

statute will prevail over the general only to the extent of any repugnancy between them. *Laughlin v. Forgrave*, 432 S.W.2d 308, 313 (Mo. banc 1968). In addition, all consistent statutes relating to the same subject are *in pari materia* and must be construed together as though constituting a single act, even if they are adopted at different times. *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 200 (Mo. banc 1991).

The cases cited in the preceding paragraph establish that Missouri's appellate courts are loathe to find that two statutes, regardless of when they were passed, are irreconcilably inconsistent with one another. Courts are reluctant to invalidate actions of the General Assembly and will do so only when circumstances leave them no alternative. This Court's decision in *Berdella v. Pender*, 821 S.W.2d 846 (Mo. banc 1991), illustrates this point.

In *Berdella*, the Court confronted a situation involving two bills passed during the General Assembly's 1990 legislative session. One bill repealed in its entirety RSMo. Chapter 460, while the second bill "amended" two sections of that same chapter. The governor signed into law the bill repealing the entire chapter 26 days before he signed the second bill. The question presented to the Court for decision was whether two statutes, one which repealed an entire statutory chapter and another that purported to amend two sections of that chapter, were irreconcilably inconsistent. The Court concluded they were not, basing its decision on the fact that neither bill specifically repealed the other. The court concluded that laws that are *in pari materia* should not be found to be inconsistent unless one act specifically repeals the other or the two are inherently in conflict with one another. 821 S.W.2d at 849.

The conflict alleged by Renew Missouri regarding Proposition C and §393.1050 does not come close to reaching the extremely high threshold that must be satisfied to invalidate a statute based on grounds that it is irreconcilably in conflict with another statute. RSMo. §393.1050 merely exempts from "any installation subsidy, fee, or rebate" and "any mandated solar renewable energy standard requirements," which could include the solar rebate obligations created by Proposition C, any electric utility that, by January 20, 2009, equals or exceeds the renewable energy portfolio requirements prescribed by Proposition C, specifically §393.1030.1(4), to be achieved by 2021. With the enactment of §393.1050, the General Assembly did not change the renewable energy portfolio requirement created by Proposition C.

In *Evans*, the Court of Appeals directed the Commission "to determine if the provisions of Proposition C are in irreconcilable conflict or can in fact be harmonized with the provisions of section 393.1050." 346 S.W.3d at 319. With the issuance of its Order in the underlying complaint proceeding, the Commission did just as directed, finding as follows:

> For an electric utility already meeting the fifteen percent renewable standard, the solar carve out and the solar rebate provisions would impose an extra compliance burden on a utility that had already, in the General Assembly's determination, gone the extra mile to offer renewable energy to its customers. Thus, the provisions of Section 393.1050 do not irreconcilably conflict with the renewable portfolio standards enacted by initiative in Section 393.1030. Rather Section 393.1050 is merely a rational

> modification . . . Since the two statutes are not in irreconcilable conflict, the passage of Section 393.1030 by initiative did not impliedly repeal Section 393.1050.

Commission's Order, p. 10; L.F., p. 245. The enactment of §393.1050 was fully consistent with the overall objectives of Proposition C and was fully within the scope of the Missouri General Assembly's legislative powers and prerogatives.

Additionally, §393.1050 begins with the phrase "[n]otwithstanding any other provision of law," while the provisions of Proposition C contain no such language. In *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630 (banc 2007), the Court held as follows:

> (T)o say that a statute applies "notwithstanding any other provision of the law" is to say that no other provisions of law can be held in conflict with it. Indeed, the "Notwithstanding" clause does not create a conflict, but eliminates the conflict that would have occurred in the absence of the clause. A conflict would be present, then, only if both statutes included a prefatory "Notwithstanding" clause or if neither statute included such a clause.

Id. at 632. This should be the end of the inquiry, but Renew Missouri points to *State ex rel. City of Springfield v. Smith*, 125 S.W. 883 (Mo. 1939), and *St. Joseph Board of Public Schools v. Gaylord*, 86 Mo. 401 (Mo. 1885), for the position that one session of the legislature cannot bind future sessions and that a "notwithstanding" clause cannot have prospective application.

Neither cited decision supports Renew Missouri's arguments. The *St. Joseph* decision is wholly irrelevant, dealing with a statute which purported to prevent any future changes, alterations, or repeal. 86 Mo. at 406. More on point – and in favor of Empire, in *Smith*, this Court held that when there is a statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more definite way, the two should be read together and harmonized, if possible. *Smith*, 125 S.W.2d at 154-155. Additionally, the *Smith* court held that where the general act – Proposition C, is later in time, the special – RSMo. §393.1050, "will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication." *Id.* at 155. Again, the drafters of Proposition C failed to include a "notwithstanding" clause.

III. The Commission's Order is lawful and reasonable and the Commission did not err in denying Renew Missouri's claim, because Empire is entitled to rely on the solar exemption provided for in RSMo. §393.1050 and is exempt from the solar requirements found in Proposition C, RSMo. §§393.1020-393.1035, in that RSMo. §393.1050 is not an unlawful special law. (Responds to Renew Missouri's Point III)

The final reason Renew Missouri contends §393.1050 is unlawful is based on the prohibition against "special" laws contained in Article III, §40 of the Missouri Constitution. Like its first two points, Renew Missouri's third point fails because it is not supported by applicable case law. Renew Missouri correctly states that Empire is the only utility that claims the solar exemption created by §393.1050. The statute, however, does not mention Empire, does not describe Empire's specific corporate characteristics, and, in

fact, does not contain any historical or "closed" classification. To the contrary, §393.1050, which took effect on August 28, 2008, created an exemption for any utility achieving, by January 20, 2009, an amount of eligible renewable energy technology nameplate capacity equal to or greater than fifteen percent of such utility's total owned fossil-fired generating capacity.

To begin its discussion under the heading "§393.1050 is a special law," Renew Missouri cites to three Missouri decisions and states: "Laws that close the membership in a class on or before the effective date of the law are special." (Appellant's Brief, p. 27) RSMo. §393.1050 was enacted on May 16, 2008, and effective on August 28, 2008. (L.F. II, p. 240) The exemption class of §393.1050, however, did not close until January 20, 2009. "Classifications are considered open-ended if it is possible that the status of members of the class could change." *Harris v. The Missouri Gaming Commission*, 869 S.W.2d 58, 65 (Mo. 1994). The exemption class of §393.1050 is not defined by any historical facts or other immutable characteristics, and, therefore, is not a facially special law.

Classifications based on factors that can change or are open-ended are presumed to be constitutional, and such laws are not "special" if the classification is made on a reasonable basis. *Jefferson County Fire Protection Districts Assn. v. Blunt*, 205 S.W.3d 866, 870 (Mo. banc 2006). To make this determination, Missouri courts employ a test similar to the "rational basis test" used in equal protection cases. *Id.* "(A) law is not special in the constitutional sense if it applies alike to all of a given class provided the classification thus made is not arbitrary or without a reasonable basis." *State ex rel.*

Public Defender Commission v. County Court of Greene County, 667 S.W.2d 409, 412 (Mo. 1984); *quoting Marshall v. Kansas City*, 355 S.W.2d 877, 884 (Mo. banc 1962). Further, even a facially special statute may "pass muster" if it is determined that some characteristic of the excluded class members provides a reasonable basis for the exclusion, considering the purpose of the statute's enactment. *Id.* Additionally, one who attacks a statute's classification, like Renew Missouri does here, bears the burden of demonstrating that the classification does not rest upon any reasonable basis. *Id.* at 412-413. Renew Missouri failed to carry its burden in this case.

When it enacted §393.1050, the Missouri General Assembly rationally concluded that any utility who, by January 20, 2009, achieved an amount of eligible renewable energy technology nameplate capacity equal to or greater than fifteen percent of such utility's total owned fossil-fired generating capacity, should be exempted from *any* installation subsidy, fee, or rebate and *any* mandated solar renewable energy standard requirements, which would include those created by Proposition C. This exemption classification is rational, because it acts to prevent those utilities who qualify for the exemption from being forced to bear a more onerous compliance burden than those utilities who do not.

Without the §393.1050 exemption, utilities like Empire, who, by January 20, 2009, had already satisfied all of the Proposition C portfolio requirements to be achieved by 2021, would have been forced to add the solar compliance requirement on top of what it already had done. Without the exemption, utilities like Empire would be forced to pay solar subsidies and rebates, when their ratepayers had already borne the cost of achieving

the 15 percent renewable energy technology nameplate capacity. Under such circumstances, Empire's burden and the burden of Empire's ratepayers under Proposition C would have been greater than the burdens imposed on other utilities. With the §393.1050 exemption, all electric utilities are still required to meet the renewable energy portfolio standard prescribed in Proposition C, specifically §393.1030.1(4). The General Assembly merely ensured that utilities such as Empire would not be required to do more. Such action is undeniably both rational and plausible and, accordingly, must be upheld under applicable legal standards.

CONCLUSION

Renew Missouri asserts three points in this appeal, each alleging that the Commission erred in denying Renew Missouri's claim as set out in Count III of its Complaint against Empire. The Commission, however, correctly determined that Empire is entitled to rely on the solar exemption provided for in RSMo. §393.1050 and is, therefore, exempt from the solar requirements found in Proposition C. The decisions of the Commission as set forth in the Order are lawful and reasonable, and the arguments of Renew Missouri to the contrary are without merit.

WHEREFORE, The Empire District Electric Company respectfully requests the Order of this Court affirming the Commission's Order. Empire requests such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies pursuant to Supreme Court Rule 84.06(c) that this brief includes the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b), and contains 4,937 words (exclusive of the cover, certificates of compliance and service, and signature block), as calculated by Microsoft Word, the software used to prepare this brief.

/s/ Diana C. Carter

CERTIFICATE OF SERVICE

Counsel for Respondent has made service of this brief on all counsel of record by way of electronic filing on this 27th day of May, 2014.

/s/ Diana C. Carter