



## Great Rivers Environmental Law Center Energy Project In Action

Great Rivers Pushes for Energy Efficiency  
Instead of New Coal-Fired Power Plants

*See page 3 inside.*



**“This state needs a comprehensive energy policy** that includes a mandatory or incentive-based renewable portfolio standard. Without such a state policy, the [Public Service] Commission continues to analyze new capacity and energy needs on a least cost basis that does not include valuations of long term health effects, economic costs of dwindling fossil resources and environmental consequences. **Missouri can do better.”**

*Opinion of Commissioner Steve Gaw Concurring in Part and Dissenting in Part, Case No. EO-2005-0329, August 19, 2005.*

## Letter from the President:



### We Can't Afford to Do Nothing about Global Warming

For many years, scientists have predicted that increased global warming would cause stronger and more frequent hurricanes. Even as the hurricanes this year lend support to these predictions, leaders who connect them with global warming are silenced. Right after hurricane Katrina struck, Robert F. Kennedy Jr. wrote in the online blog Huffington Post, "As Hurricane Katrina dismantles Mississippi's Gulf Coast, it's worth recalling the central role that Mississippi Governor Haley Barbour played in derailing the Kyoto Protocol ..." Kennedy then cited a study published in the Journal Nature in August 2005 which linked the "increasing prevalence of destructive hurricanes to global warming," and commented "now we are all learning what it's like to reap the whirlwind of fossil-fuel dependence which Barbour and his cronies have encouraged."

Kennedy's comments were immediately censured by many commentators, such as author James Glassman, who accused Kennedy of being an "enviro-predator." Editor Jay Nordlinger wrote, "Exhibit A in the awfulness of Katrina reaction was the piece by Robert F. Kennedy Jr. for The Huffington Post."

The precautionary principle is a phrase first used in Germany in the 1970's. It is the idea that if the consequences of an action are unknown, but are judged to have some potential for major or irreversible negative consequences, then it is better to avoid that action. In the case of global warming, it is the right principle to follow. We must curb our greenhouse gases even if 100% of all scientists are not in agreement. There is enough reliable evidence to make the case that greenhouse gases are causing global warming even if the case is not perfect.

Kathleen Henry

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## Board News

*Ron Kucera joins Great Rivers' Board of Directors*

We are pleased to announce that Ron Kucera has joined the Board of Directors of Great Rivers Environmental Law Center. Ron recently resigned from the state Department of Natural Resources in protest over the State's give-away of the Boonville Bridge, which he believes violates the law and will lead to the dismantling of the Katy Trail. At the DNR, Ron was Deputy Director of Policy before resigning. He worked at the DNR for 28 years. Welcome to Great Rivers, Ron.

**Great Rivers  
Environmental Law Center**  
*The legal resource for natural resources.*  
(a 501(c)(3) tax-exempt nonprofit corporation)

### Mission Statement

*We provide legal services to citizens' groups,  
organizations and individuals who seek to protect  
and preserve the environment.*

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# GREAT RIVERS' ENERGY PROJECT

*Two cases exemplify Great Rivers' efforts to protect the air quality for Missourians.*

## Why We Challenge New Coal-Burning Power Plants

Great Rivers is fighting to stop two coal-burning power plants from being built in Missouri, one by City Utilities of Springfield and the other by Kansas City Power and Light.

These are two battles in a larger war. Nationwide 124 new coal plants are on the drawing board. In Missouri, besides CU and KCPL, American Electric Cooperative Inc. has announced plans for a 650 megawatt plant in Carroll County in western Missouri, and we can expect AmerenUE soon to plead for more coal-fired capacity in the St. Louis area. Just across the river in Marissa, Illinois, Peabody Coal has a permit, now under appeal, to build its massive 1500 MW Prairie State Energy Campus.

Coal is not pure. Power plants like these are responsible for much of the smog, ozone, acid rain and mercury pollution that cause respiratory and other health problems, especially in children, and for carbon dioxide emissions that trap the sun's heat in the lower atmosphere—the phenomenon known as the greenhouse effect or global warming.

Great Rivers believes that we can avoid burning coal for electricity if we reduce our need for electricity, use it more efficiently and generate power with renewable sources like wind and sun. This sensible, sustainable approach is under

threat. If a huge new generation of coal-burning power plants is built it will kill the market for renewable technologies and strong efficiency programs. It will perpetuate 19th century technology just when we need 21st century solutions.

There is no simple alternative to coal. The wind doesn't always blow and the sun doesn't always shine, so you have to build extra capacity. But renewable generators can be added in small, modular units—a wind turbine here, a solar panel there—unlike a coal plant, and the “fuel” is free.

Efficiency programs have to reach into all the multifarious industrial, commercial and residential activities of a complex society, and a way has to be found to let the utilities make money for not selling electricity. In fact, there is such a way, a small charge known as a system benefit, or public benefit charge, added to the ratepayers' bills. In the long run people save money by not having to pay the cost of a billion-dollar coal-burning plant, and they conserve nonrenewable natural resources.

The struggle with Old King Coal will continue to be an important part of Great Rivers' work. ❖

## Hearing Held Before Public Service Commission Over Kansas City Power and Light's Proposed New Coal-Burning Plant

In June and July of this year, Great Rivers represented the Concerned Citizens of Platte County and the Sierra Club in a four-day hearing before the Public Service Commission. As Great Rivers' attorney stated later, “It can feel like David versus Goliath to go into a courtroom alone and find sixteen lawyers on the other side.” The coal company, Kansas City Power and Light (KCPL), had signed an agreement with the Public Service Commission staff, Office of Public Counsel, Missouri Department of Natural Resources, and several large corporations authorizing KCPL to construct a new coal-burning plant north of Kansas City, to be called Iatan 2 and to be built adjacent to the current plant Iatan 1.

Our clients argued that the growth rate in that area could be met by using energy efficiency measures and wind power. Although we presented strong evidence of this, four out of five commissioners sided with the coal company and one,

Steve Gaw, wrote a concurrence and dissent a part of which is quoted on the cover of this Reporter.

If Congress someday decides to tax carbon emissions, KCPL - or rather its rate-paying customers - will pay the tax and keep burning coal. If Congress should mandate reduced emissions, well, KCPL has no trick up its sleeve to deal with that.

KCPL is proposing to include a modicum of wind generation and efficiency programs in its plan. These will not replace coal, but only add to the costs the company must recoup from the ratepayers. Maybe someday, suggests KCPL, we'll be able to do more with wind and efficiency. In the meantime Missourians will be saddled with another dirty coal plant that could last 50 years or more. ❖

## Administrative Hearing Held in Case Against City Utilities of Springfield Over Proposed Coal-Burning Power Plant

In October, 2005, Great Rivers represented the Sierra Club and Linda Chipperfield in the hearing before the Air Conservation Commission over the permit issued by DNR to City Utilities for the construction of a new coal-burning power plant in the City of Springfield, Missouri. The plaintiffs

contend the DNR issued the permit without requiring the Utility to use the cleanest available technology and that thousands of tons of hazardous pollutants will therefore be unnecessarily emitted. The Air Conservation Commission is expected to issue its ruling in December. ❖

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## Katy Trail

Great Rivers is fighting to save the historic Boonville Lift Bridge. The Bridge connects the two sides of the Katy Trail across the Missouri River and, for several years, was the longest lift span bridge in the world. Great Rivers is trying to save the Bridge because the Bridge is part of the right-of-way for the Katy Trail. A severance in the right-of-way threatens the existence of the Katy Trail itself, because it could set the stage for private property owners along the trail to take the state to court to win back their property.

The Katy Trail came into being when, in the mid 1980's, the Missouri-Kansas-Texas Railroad Company (MKT or Katy) was about to abandon its rail corridor, salvage its materials (including the Boonville Lift Bridge), and dispose of its right-of-way. At the eleventh hour, instead of disposing of the right-of-way, MKT approached the Missouri Department of Natural Resources about putting its rail corridor to use as a public trail. The Katy Trail was born.

Late last year, Union Pacific Railroad, MKT's successor, made known its plans to dismantle the historic Bridge,

use some of the steel, and sell the remainder. Within the past few months, DNR has executed documents purporting to abandon the public's interest in the historic Bridge, paving the way for the dismantling of the Bridge. Removing the Bridge creates a severance in the Katy Trail's right-of-way which could revert to adjacent property owners.

Great Rivers is representing users of the Katy Trail in their effort to save the Bridge. Great Rivers believes that the State's plan to allow Union Pacific to dismantle the Bridge is in violation of the Katy Trail's use agreement. The trail use agreement allows Union Pacific to modify the bridge and keep it available for transportation purposes only. It does not give Union Pacific the right to dismantle the Bridge. Great Rivers also believes that DNR has no authority to give away the public's right to use the bridge for transportation purposes, no authority to give away the public's unbroken right of access to the trail corridor, and no authority to give away the public's right to enjoy the part of the Katy Trail that includes the historic Boonville Lift Bridge. ❖

### **Great Rivers Board Member Kay Drey Speaks at Symposium with Helen Caldicott**

Great Rivers Board member Kay Drey was one of the speakers at a symposium on whether or not nuclear power is an answer to global warming, which was held at Airlie House in Warrenton Virginia (near Washington DC), on November 7 and 8. The symposium was organized by the Nuclear Policy Research Institute, headed by Helen Caldicott, M.D. Representatives from both sides of the debate spoke before an audience of journalists. ❖

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## Great Rivers Appeals the Case for the Preservation of Buehler Park

The City of Rolla, Missouri, is once again proposing to sell and develop historic Buehler Park. Buehler Park was deeded to the City of Rolla in 1958 with the language: "shall be used for park purposes only and none other...FOREVER." Plaintiffs contend that Buehler Park is a dedicated park and cannot legally be sold.

The City's last effort, in 1997, gave rise to the popular newsletter, "No Standing News," after the courts ruled in a split decision that park users had no standing to challenge the proposed sale.

Great Rivers is representing taxpayers and park users in their effort to save the Park from being converted to a restaurant. Great Rivers filed the brief on appeal in November, 2005 in the Missouri Court of Appeals.

See letter from Jerry Cohen, president of Citizens for the Preservation of Buehler Park on page 6.



*The plaintiffs stand in Buehler Park at a picnic in October 2005.  
From left to right: Phillip Lampert, Linda Gaddy, April Gaddy,  
Tom Sager, Linda Novak, Eileen Lunsford.  
Not in photo: Neil Elfrink and Edie Gale Hays.*

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## Brief Update on Other Projects

### Missouri River Protection

We continue to represent the Sierra Club in its challenge to a proposed levee on the Missouri River at Jefferson City, Missouri. The levee would be a 1,000 year “super-levee” that would have many serious negative environmental impacts, including aggravated flood risk, destruction of natural wetlands and reduced habitat for endangered species. The trial court ruled it was premature to bring suit, as federal funding was not in place. We appealed this ruling to the 8th Circuit court of appeals, and on October 14, 2005, presented oral argument on the case.

### Assistance in Asbestos Removal Case

Great Rivers continues its work for Families for Asbestos Compliance, Testing and Safety (FACTS), in the group’s legal action against the City of St. Louis and City of St. Louis Airport Authority over the illegal use of the “wet method” of asbestos removal in demolishing more than 300 homes in Bridgeton, Missouri. In October and November, 2005, Great Rivers has taken a lead role in pretrial investigation.

### Opposition to Clearcutting on the Mark Twain National Forest

Great Rivers represents Heartwood, Inc., and the Missouri Forest Alliance, in their challenge to a proposed timber sale in the Mark Twain National Forest. The two groups oppose clearcutting on national forests nationwide. The plan under legal challenge is one which would allow for 338 acres to be clearcut in Missouri. Great Rivers filed a motion for summary judgment in the United States District Court, Eastern District of Missouri, in October, 2005.

### Representation of the Public Interest on State Task Forces

Great Rivers has been invited by the Department of Natural Resources to serve on task forces and represent the public interest. Currently we serve on three task forces: those dealing with hazardous waste cleanups, landfill siting and vehicle inspection and maintenance. It is vital that the public interest be represented in order to balance the interests that industry presents to the DNR.

### University of Missouri Professors Denied Choice



Under a ruling issued in July, 2005, by an administrator at the University of Missouri, Columbia, the faculty and staff at the entire four-campus system will receive no choice in this fall’s charitable giving campaign if they decide to make donations in pre-tax dollars through the University’s charitable giving campaign. They will have only the option of giving to the United Way. Earth Share of Missouri has been denied access again, for the ninth straight year since first making a request to be a part of the campaign. University officials denied the request from 1996-2003 without giving a reason, and since then have denied the request for the reason that “the designated or affiliated agencies described in [Earth Share’s] application do not devote substantially all of their activities directly to providing health, welfare and social services directly to, or for the direct benefit of human beings.”

After the University rejected Earth Share in 2002, Earth Share enlisted Great Rivers’ help in appealing the denial to the University. For several years we struggled to gain access to public documents created by the University on the campaign. In 2005, Earth Share applied again to the University and was again denied access.

At the hearing in July, 2005 on the denial, five directors and members of Earth Share’s member organizations testified that their organizations provide health services. But the University again denied Earth Share the opportunity to be a part of this year’s campaign.

There is a First Amendment right established by the United States Supreme Court for organizations to participate in such campaigns. Earth Share would like for the University to comply with the First Amendment.



*Jerry Klamon,  
Executive Director  
of Earth Share*

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# ***Your Donations Make it Possible for Great Rivers to Provide Much Needed Help: Read About Two Organizations That Have Received This Help!***

*Testimonial from Gerald Cohen, President, Citizens for the Preservation of Buehler Park, October 2, 2005*

Mr. Cohen wrote:

“When the Rolla mayor and city council decided earlier this year to sell Buehler Park—despite the 1958 dedication deed saying that Buehler Park ‘shall be used for park purposes only and none other...FOREVER’ (caps in the document)—they were clearly counting on a quick knockout. They figured that the preservationist movement of 1997 was now exhausted and in disarray, that there would be a brief hue and cry from the citizens, but that they lacked any effective clout to block the sale. The park would be sold, destroyed, and readied for the construction of a restaurant.



“But the mayor and city council had not figured on the involvement of Great Rivers Environmental Law Center—in fact I doubt they had even heard of it—and this organization was the great equalizer. The quick knockout was thwarted, and now the Buehler Park preservationists have two chances to preserve the park. The first is by a ruling in the Court of Appeals, and the second is in the political process—something afforded us by the legal process extending into the campaign season, when Rolla will elect a new mayor (early April). The preservationists, while avoiding an official endorsement of any candidate, will as individuals be able to make the preservation of the park a political issue and look very closely at who is or is not willing to save the park in accordance with the 1958 dedication deed.

“So to GRELC I say thank you—thank you very much; I know I speak for all the members of the Buehler Park preservation group when I express my profound gratitude for your assistance. The sale of a dedicated city park is a civic disgrace, but one that the citizens would have been unable to block without your help. We simply would not have had a chance without you.”

Gerald Cohen, October 2005

## **Concerned Citizens of Platte County, Inc.**

Susan Brown  
14 Mill St.  
Dearborn, Mo 64439  
816-450-8948

October 26, 2005

Kathleen Henry  
Great Rivers Environmental Law Center  
705 Olive Street  
Suite 614  
St. Louis, Mo 63101

Dear Kathleen:

I just wanted to let you know how much you have helped us. Prior to our meeting, a local power company (Kansas City Power & Light) had plans for two 850 MW coal burning power plants near our small community north of the Kansas City metro area. Because of our activism, the company agreed to only one plant along with making upgrades to their existing plants and adding wind and efficiency to their portfolio.



They next needed to gain approval from the Missouri Public Service Commission. This was a lengthy process of meetings in Jefferson City and we needed legal representation to intervene. Your law firm provided an attorney to represent us and kept us updated about what was happening at the workshops. Their plan was eventually approved and your firm is now helping us appeal the decision of the PSC in court.

Our organization is made up of a small board of seven people. The local community of latan, where the plant may be located, is so poor that EPA's Environmental Justice Department was alerted. There would have been no way for our small organization to pay for legal help in this matter. Great Rivers Environmental Law Center has been a great help to us. We appreciate your dedication to what is good and right, while making the huge sacrifices that must be necessary. Thank you.

Sincerely,  
Susan Brown  
Chairperson, Concerned Citizens of Platte County, Inc.

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## ***We are very grateful for your financial support.***

*Your contributions make it possible for us to continue to provide the legal services that are so necessary in today's world.*

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### **Contributions received April – October 2005**

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Citizens for the Preservation of  
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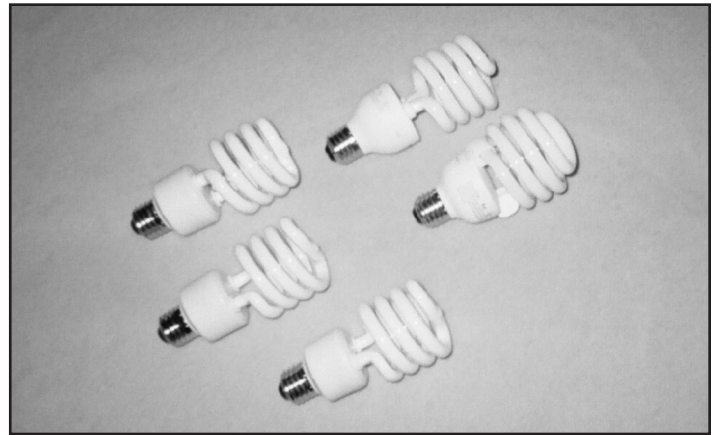
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## Great Rivers Launches Energy Awareness Free Gift Program

In an effort to encourage energy conservation, Great Rivers will send free energy efficient light bulbs to donors at the \$50.00 or higher level. These compact fluorescent light bulbs use about *one-fourth* of the energy that regular incandescent light bulbs use. The utility companies prefer to build new coal-burning power plants rather than encourage energy conservation.

Missouri law required the companies to consider energy efficiency but the utilities sought a rescission of the law in 1994 and succeeded in having the law suspended for the ten-year period from 1994-2004.

With the increased public awareness of the fact that coal-burning plants emit tons of carbon dioxide, which causes global warming, and other pollutants which harm human health, hopefully the utility companies will not seek again to have this good law suspended. Great Rivers encourages Missourians to replace all of their light bulbs with compact fluorescent bulbs. In fact, there is a kind of lighting available that uses *one-tenth* of the amount of energy that



incandescent bulbs use – light-emitting diode lamps, or LED's, available in reading and floor lamps and for purchase on-line. The lamps cost between \$79.00 and \$150.00. People who can afford to purchase those lamps would be cutting greenhouse gas emissions dramatically. Those who can't afford them will cut greenhouse gas emissions substantially by using energy-saving compact bulbs.



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