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

| | | |
|---|---|---|
| In the Matter of Union Electric Company, d/b/a Ameren Missouri's RES Compliance Report and RES Compliance Plan. | ) ) ) | File No. EO-2020-0328 |

**AMEREN MISSOURI'S RESPONSE TO COMMENTS OF SIERRA CLUB AND TO STAFF'S JUNE 12, 2020 REPORT AND MEMORANDUM**

**COMES NOW** Union Electric Company, d/b/a Ameren Missouri (Ameren Missouri or the Company), and for its response to the above-referenced Comments filed by the Sierra Club and to Staff's June 12, 2020 Report and Memorandum,[1] states as follows:

## INTRODUCTION/BACKGROUND

1. Ameren Missouri timely filed its Renewable Energy Standard (RES) Compliance Report for calendar year 2019 on April 15, 2020, as required by 20 CSR 4240-20.100(8)(A). Ameren Missouri also filed its RES Compliance Plan on that same date. On May 29, 2020, Staff timely filed its report on its review on the RES Compliance Plan but sought an extension of time to file its report on its review of the RES Compliance Report, which was granted by the Commission. Thereafter, Staff filed its report reflecting its review of the RES Compliance Report on June 12, 2020. Sierra Club filed its Comments on the RES Compliance Report on that same date. By its *Order Directing Filing,* the Commission directed Ameren Missouri to file a response to Staff's report and Sierra Club's Comments by July 1, 2020.

2. Staff's review of the RES Compliance Report indicated that "Ameren Missouri has achieved compliance with the 2019 RES requirements." Staff's Official Case File Memorandum p. 10 (June 12, 2020). Staff's review did indicate that Ameren Missouri's RES Compliance Report lacked certain information that is literally required by the RES rule regarding third-party REC

[1] The Company files this Response in accordance with the Commission's June 16, 2020 *Order Directing Filing*.

purchases made by Ameren Missouri for compliance in 2019, but Staff also indicated that it was able to verify the required information via its access to North American Renewables Registry ('NAR") information. Consequently, Staff did not recommend that the Company supply such information and simply recommended the Company obtain a waiver of these technical rule requirements. The Company has since filed a request for the appropriate variances, explaining that it in fact has no means to literally comply with the rule as to almost all of the requirements in question and that, in any event, Staff's and the Commission's access to the information at issue renders such literal compliance unnecessary. Those variance requests are pending in File No. EE-2020-0411.[2]

3. Sierra Club takes issue with the RES Compliance Report and more specifically with whether certain RECs used by Ameren Missouri for compliance were eligible for compliance purposes. To back-up its purported issue, Sierra Club takes out of context one short statement in Staff's June 12, 2020 Report,[3] expresses its opinions, points to what it characterizes as "credible information" that it does not identify, and attempts to tie it all together with a flawed legal analysis of whether the RECs in question were properly used by Ameren Missouri for compliance. Sierra Club then urges the Commission not to approve the RES Compliance Report "until it is shown by additional information whether, or to what extent, the WestRock RECs [some of the RECs purchased by Ameren Missouri] are eligible to be used toward the Missouri RES." Sierra Club Comments p. 6.

[2] As outlined in the Company's variance request filing, it had mistakenly been operating under the assumption that similar variances it obtained in 2011 covered its RES Compliance Report in this docket. In any event, the variances have been requested.

[3] As addressed further below, the short statement relied upon which Sierra Club relies was inadvertently and mistakenly included in Staff's June 12 filing and is inaccurate, as evidenced by the Staff's Notice of Correction filed in this docket on June 19, 2020.

4. Before addressing the substance of Sierra Club's issues about certain of the RECs purchased by Ameren Missouri, it is important to understand and properly apply the RES itself (§§ 393.1025, .1030, RSMo. (Cum. Supp. 2019)), the Commission's RES rules, and related rules of the Division of Energy of the Department of Natural Resources (DE).[4]

## THE APPLICABLE LAW

5. The RES required the Commission, in consultation with DE, to select a program for tracking and verifying the trading of RECs. § 393.1030.2. It is undisputed that the Commission properly made that selection when it chose the NAR as that program.

6. The RES further required that the Commission (except where DE was specified) adopt rules related to RES compliance that contained certain items, as detailed in sub-subsections (1) – (4) of subsection 2 of § 393.1030. The RES also contains the following requirement in subsection 4:

> The department [DE] shall, in consultation with the commission, establish by rule a certification process for electricity generated from renewable resources and used to fulfill the requirements of subsection 1 of this section.

The "requirements of subsection 1 of this section" are the portfolio requirements (i.e., the percentages) of renewable energy each utility must utilize, whether by utility generation and the associated RECs from that generation or from purchasing REC,s.

7. It is undisputed that DE did, in consultation with the Commission, properly promulgate a rule that established such a certification process. That rule is codified as 10 CSR 140-8.010.

[4] At the time the RES was adopted, the "department" was the Department of Economic Development, which in turn discharged its RES-related activities through its Division of Energy. Since then the department has become the Department of Natural Resources, which still maintains a Division of Energy. References to DE herein are to the "department" as used in the RES.

8. The Commission's RES rule defines a "REC," and specifically indicates that if the certificate at issue was "validated through the commission's approved REC tracking system" [the NAR] it is indeed a "REC." 20 CSR 4240-20.100(1)(M). Moreover, not only does the RES itself provide that a purchased REC can be used to comply with the portfolio requirement but so too does the RES rule. *See* 20 CSR 4240-20.100(2) ("all electric utilities must generate or purchase RECs and S-RECs associated with electricity from renewable energy resources sufficient to meet the RES portfolio requirements …").

9. DE's rule also defines a REC. Under DE's rule, a "REC" is "a tradeable certificate, as defined by section 393.1025(5), RSMo, that one (1) megawatt-hour of electricity has been generated from *eligible* renewable energy sources." 10 CSR 140-8.010(1)(E) (emphasis added). Whether a renewable energy resource is "eligible" is determined by DE (*not* the Commission, and *not* by the utility) under the DE rule. See 10 CSR 140-8.010(4). DE's certification of a resource as eligible (which in turn makes the RECs produced by the resource eligible) is the final word on eligibility unless *DE* revokes an eligibility determination, a result that DE's rule contemplates must be initiated by a complaint to DE. *Id.* at (4)6

**APPLICATION OF THE LAW TO THE UNDISPUTED FACTS**

10. The RECs about which Sierra Club complains are associated with energy produced from biomass facilities owned by WestRock Company which were purchased from WestRock by a broker (STX Services B.V.) and in turn sold to Ameren Missouri. As indicated on Exhibit A Confidential, attached hereto and incorporated herein by this reference, the RECs at issue were registered in the NAR as being produced from eligible renewable energy resources (the biomass facilities) that had been certified by DE. We know the facilities have been certified by DE as eligible renewable energy resources – and that its RECS are therefore eligible for RES compliance. We know this because we know that the NAR will not reflect a REC as being certified and eligible

for Missouri RES compliance unless and until DE has certified a facility as an eligible renewable energy resource. With respect to the RECs at issue, the NAR *does reflect* that they are eligible RECs as shown by its indication of "Yes" in the "Mo" column corresponding to the RECs at issue on Exhibit A Confidential regarding those RECs,.

11. The obvious purpose of the RES Compliance Report is to provide documentation that a sufficient number of RECs (whether generated by renewable energy resources owned by the utility or by renewable energy resources owned by others) were retired in the compliance year that is being reported to meet the RES' portfolio standard. Simply stated, the NAR is the sole authoritative source of that information, having been selected for that very purpose by the Commission. It is without dispute that the NAR demonstrates that Ameren Missouri did retire a sufficient number of RECs in 2019 to meet or exceed the RES portfolio standard and that according to the NAR, those RECs were eligible for RES compliance. The NAR would not so indicate unless DE had indeed certified the facilities from which the RECs were generated as eligible renewable energy resources.

12. As earlier noted, the Staff has reported that the Company has demonstrated compliance with the RES for compliance year 2019, which is covered by the RES Compliance Report at issue. The *only* valid issue for this docket are the technical information deficiencies which the Company mistakenly believed were not deficiencies due to its receipt of an earlier variance and which, in any event, are truly technical in nature given that they did not and do not impair the Staff's and the Commission's ability to determine RES compliance. The Company has taken the step of formally seeking a variance from those technical requirements that it is incapable of literally meeting in File No. EE-2020-0411. Nor does Staff's statement in its June 12 Report that "Ameren Missouri is in the process of responding to Staff's inquiries" mean that Staff's conclusion that the Company is in full compliance is somehow in error or unjustified. Simply put,

the quoted statement appeared in Staff's May 29 request for an extension of time and then it was mistakenly carried over to Staff's June 12 report. As Staff's June 19, 2020 Notice of Correction indicates, by the time Staff filed its June 12 report the Company had fully addressed Staff's inquiries, and Staff had fully determined that Ameren Missouri "has achieved compliance with the 2019 RES requirements." Staff Memorandum, p. 10.

13. In short and as the above discussions of the RES itself and the Commission and DE regulations issued under the RES demonstrate, the legal flaws in Sierra Club's Comments rest on misstatements about, or the failure to appreciate two key legal realities: first, that it is *DE* that determines if a resource is an eligible renewable energy resource which in turn determines of the RECs are therefore eligible for compliance, and that if someone takes issues with DE's conclusion *it must take that up with DE* – not the Commission; and second, that if someone claims a utility is out of compliance with the RES, the proper course of action is for that party to *file a complaint* with the Commission and prove their case. The Commission has repeatedly made this clear in a series of orders rejecting attempts to use a RES Compliance Report docket as a forum to debate whether a given facility (or REC) is eligible. *See, e.g., Notice Regarding Ameren Missouri's 2013-2015 Compliance Plan*, File No. EO-2013-0503 (Advising parties that had issues about the RES compliance report who "want to further pursue their contention that Ameren Missouri has failed to comply with the … [RES to file] a complaint pursuant to Section 4 CSR 240-20.100) [sic] (8)(A) and the statutes and regulations governing complaints before the Commission"); and more recently *Order Regarding Renewable Energy Standard Compliance Report and Plan,* File No. EO-2016-0286 (Where Renew Missouri, among other things, claimed certain RECs were not eligible for RES compliance the Commission again directed it to "bring a complaint against Ameren Missouri as permitted by Section 386.290 . . .").

14. There is nothing more for the Company, the Staff, or the Commission to do in this docket. Under 20 CSR 4240-20.100(8)(F) while the Commission can order the utility to provide additional information, there is no additional information in the Company's possession that it can provide nor does it need to, given that the RECs at issue are, according to DE, and in turn the NAR, eligible for RES compliance and were used as such by Ameren Missouri. Consequently, this docket should be closed.

WHEREFORE, Ameren Missouri files this response to Sierra Club's Comments and requests that this docket be closed.

Respectfully submitted,

**/s/ James B. Lowery**
**James B. Lowery**, Mo. Bar #40503
SMITH LEWIS, LLP
P.O. Box 918
Columbia, MO 65205-0918
(T) 573-443-3141
(F) 573-442-6686
lowery@smithlewis.com

**Wendy K. Tatro**, Bar #60261
Associate General Counsel
Union Electric Company
d/b/a Ameren Missouri
P.O. Box 66149 (MC 1310)
1901 Chouteau Avenue
St. Louis, MO 63166-6149
(T) 314-554-3484
(F) 314-554-4014
AmerenMOService@ameren.com

**Attorneys for Union Electric Company**
**d/b/a Ameren Missouri**

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission, facsimile or email to all counsel of record on this 1st day of July, 2020, to the Missouri Public Service Commission Staff and to the Office of the Public Counsel.

___/s/ James B. Lowery