

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

In the Matter of Union Electric )	
Company d/b/a Ameren Missouri's )	<u>Case No. EO-2013-0307</u>
Voluntary Green Program/Pure Power )	Tariff No. JE-2013-0197
Program Tariff Filing. )	

**MOTION TO STRIKE AMICUS CURIAE BRIEF OF RENEW MISSOURI**

**COMES NOW** Union Electric Company d/b/a Ameren Missouri and for its Motion to Strike, states as follows:

1. On February 20, 2013, The Earth Island Institute, d/b/a Renew Missouri (Renew Missouri) filed an application to intervene, out of time, in this case.

2. On March 6, 2013, the Missouri Public Service Commission (Commission) denied Renew Missouri's request (Order), but did order that Renew Missouri be allowed to file an amicus curiae brief. The Order specifically noted that while Renew Missouri could file a brief and present its perspectives and legal arguments, "the Commission makes clear that the assertions, allegations, and statements of attorneys in pleadings, briefs or oral arguments do not constitute evidence."<sup>1</sup>

3. This Commission statement is consistent with case law regarding amicus curiae briefs, in that the one filing the brief "must accept the case as he finds it."<sup>2</sup>

4. A review of Renew Missouri's amicus curiae brief reveals that there is only one citation to the record developed in this case and that citation was to a statement made by Ameren Missouri counsel during opening statements -- which, of course, as the Commission warned in its earlier order, cannot be considered evidence in this case. This fact is significant because the brief does not limit itself to arguing points of law, but sets

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<sup>1</sup> Order Regarding Motion to Intervene, March 6, 2013, p. 6.

<sup>2</sup> *Matter of Additional Magistrates*, 580 S.W.2d 288, 293 (Mo. Banc 1979).

forth allegations for which there is no support in the record. It appears that Renew Missouri simply took its previously filed testimony (which the Commission determined should be disregarded) and recycled the same allegations in a brief format. There are allegations that Renew Missouri was somehow involved in the Pure Power negotiations between Ameren Missouri and 3Degrees (a fact Ameren Missouri would have denied, if it were an allegation in the record), an assertion that Pure Power does not contribute to increasing renewable generation (an allegation Ameren Missouri would have disproven at the hearing, if it were an allegation in the record), and allegations about things 3Degrees allegedly committed to do for Renew Missouri (again, something Ameren Missouri would have addressed if it had been at issue in the case). Finally, Renew Missouri offered its opinion on how well Pure Power participants understand the Pure Power program. The record contains no support for Renew Missouri's allegations on this topic. In fact, the only evidence on this issue is the public comments submitted by some Pure Power participants. Not a single public comment indicates a misunderstanding about the program. Indeed, one public comment is from an installer of solar panels, and that person said he finds that participants are well informed about the program.

5. Renew Missouri's brief goes on to suggest that the Commission order Ameren Missouri to undertake a completely different program than the one under consideration in this case. This, of course, is beyond the Commission's authority to grant. The Commission is free to approve or reject the proposed tariff, however, the Commission does not have the authority to design a completely different program and then order Ameren Missouri to implement it.

6. For the foregoing reasons, Renew Missouri's amicus curiae brief should be stricken in its entirety and should not be considered by the Commission in rendering its decision on Ameren Missouri's Pure Power tariff.

**WHEREFORE**, Ameren Missouri respectfully requests that the Commission enter its order striking Renew Missouri's amicus curiae brief in its entirety.

Respectfully submitted,

UNION ELECTRIC COMPANY,  
d/b/a Ameren Missouri

/s/ Wendy K. Tatro

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**ATTORNEYS FOR UNION ELECTRIC  
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## **CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record and to counsel for Renew Missouri this 16th day of April, 2013.

**Missouri Public Service  
Commission**

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*/s/ Wendy K. Tatro*

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