BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Renew Missouri	)	
Advocates d/b/a Renew Missouri's	)	File No. EX-2019-0378
Petition for Amendment of Commission	)	
Rule 4 CSR 240-20.060.	)	

AMEREN MISSOURI'S RESPONSE TO ORDER DIRECTING STAFF TO INVESTIGATE AND FILE RECOMMENDATION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri") and in response to the above-captioned Missouri Public Service Commission ("Commission") order (the "Order"), states as follows:

A. If a formal rulemaking is to proceed, the starting point should be the Staff's more balanced proposed amendments to the existing cogeneration rule.

1. As outlined in detail in the Staff Recommendation filed in this docket on June 14, 2019, approximately one year ago the Staff, after receiving input via an in-person workshop attended by numerous stakeholders and through other submissions by stakeholders in the docket, put forth in File No. EW-2018-0078[1] a draft set of amendments to the Commission's existing cogeneration rule (4 CSR 240-20.060) (the "Cogeneration Rule"). A wide variety of stakeholders, including Renew Missouri, Ameren Missouri, and other utilities offered specific comments on the draft set of amendments offered by the Staff. An additional workshop was also held (earlier this year) in that docket. Moreover, some of the issues relating to the Cogeneration Rule have also been the subject of other workshops conducted in File No. EW-2017-0245.[2] In fact, File No. EW-2018-0078 had its origins in the workshops initially conducted in File No.

[1] Captioned *In the Matter of Staff's Review of Commission Rules 4 CSR 240-20.060 (Cogeneration), 4 CSR 240-3.155 (Filing Requirements for Electric Utility Cogeneration Tariff Filings) and 4 CSR 240-20.064 (Net Metering).*
[2] Captioned *In the Matter of a Working Case to Explore Emerging Issues in Utility Regulation.*

EW-2017-0245. To-date, the Commission has not elected to proceed with a formal rulemaking to consider amendments to the Cogeneration Rule.

2. If the Commission is inclined to initiate a formal rulemaking process at all – and as the Commission knows if it does so it triggers prescriptive time limitations within which certain actions must be taken instead of controlling that timeline as it can through the use of Commission workshops – the Company could not agree more with the Staff's recommendation filed in this docket: the starting point the Commission should use in any such formal rulemaking would be the far more balanced Staff draft of Cogeneration Rule amendments. What Renew Missouri is asking the Commission to do is to propose extensive Cogeneration Rule amendments based on *Renew Missouri's* (in fact based on renewable developers') one-sided perspective on what such a rule should provide for. These one-sided viewpoints fail to account for any of the other perspectives or suggestions discussed during the workshop process. The Commission should reject Renew Missouri's request to start a rulemaking at the extreme end of the possible Cogeneration Rule amendment spectrum. Instead, if a proceeding is to commence at this time at all, the proceeding should start by using Staff's draft amendments, developed based on the workshops' overall comments and input from all stakeholders.

3. Another point regarding Renew Missouri's proposed amendments relating to the origin and history of those proposed amendments bears noting. In responding to the Staff's draft submitted in File No. EO-2018-0078, Renew Missouri jointly submitted comments with renewable developer Cypress Creek Renewables. Cypress Creek is a California-based company that bills itself as "one of the largest utility-scale solar EPC firms in the country."[3] The joint comments Cypress Creek and Renew Missouri submitted were "authored by Sam Kliewer of [Cypress Creek

[3] https://ccrenew.com/what-we-do/

Renewables] with input from Renew Missouri."[4] While not identical to the Cogeneration Rule amendments Renew Missouri is now advocating for in this docket, a significant number of the amendments proposed by Renew Missouri in this docket are quite similar to those advocated for by Cypress Creek in the workshop docket, including the most extreme proposals made by Cypress Creek/Renew Missouri in the workshop and now in its rulemaking petition. It is of course perfectly permissible for a renewable developer whose goal is to advance its business interests by building more solar to advocate for Commission rules that aid in its ability to do so. And it is equally permissible for Renew Missouri to join with such a developer since Renew Missouri, as its name suggests, favors renewable generation for reasons that do not necessarily have anything to do with a utility's resource needs or the costs to its customers that meeting those resource needs cause. However, the source of these proposals and their vested interest in the benefits adoption of them would bring to them are relevant to the Commission's consideration of how to proceed in this docket.

4. The rest of this response will, at a high level, address some of the most concerning provisions of Renew Missouri's proposed amendments. The Company also refers to the Commission to three filings it made in File No. EW-2018-0078 which provide additional details on these concerns, as follows: (i) Comments of Union Electric Company d/b/a Ameren Missouri (addressing the Staff's draft amendments) (EFIS Item No. 29), Additional Comments of Utilities (addressing Cypress Creek/Renew Missouri's rule proposals) (EFIS Item No. 35),[5] and the Company's Response Regarding Standard Offer Contracts (addressing Staff's request for such comments) (EFIS Item No. 37).

[4] Joint Comments of Cypress Creek Renewables and Renew Missouri, File No. EW-2018-0078, EFIS Item No. 30.
[5] Submitted jointly with the other Missouri electric utilities.

B. Renew Missouri's proposal reflects an inappropriate one-size-fits-all approach to avoided costs that also prematurely forces a resource commitment well before the resource is needed.

5. Stated generally, Renew Missouri's rule proposal seeks to require Missouri electric utilities to buy energy and capacity from merchant developers (which presumably will primarily build renewable generation) at fixed prices for a term of 15 years whenever, wherever, and at whatever capacity levels (even if it exceeds capacity needs reflected by utility resource planning) the developer decides to build and bring the generation online. Renew Missouri seeks to impose such an obligation by requiring standard offer contracts ("SOC") for systems up to 20 megawatts ("MW") and through its imposition of a "legally enforceable obligation" under those SOCs. There are several obvious concerns – and this is not an exhaustive list – with this one-sided approach.

6. First, while electric utilities use their integrated resource planning ("IRP") avoided costs to plan for long-term (20-year) resource needs, those avoided costs are necessarily long-term estimates and are not used to make actual resource decisions until close to the time that the resource is needed. Without getting into the details of Ameren Missouri's resource needs, at a high-level Ameren Missouri's most recent IRP indicates that it does not need to add an energy/capacity resource until the mid-2030's – deep into the 20-year planning horizon. Developers should not be able to take advantage of a 15-year call option today based on estimated long-run avoided costs by forcing Ameren Missouri, or any other utility, into making a "resource decision" (in point of fact, the *developer* will be making that decision for the utility) today when such a decision does not need to be made until materially later. As the Company indicated in its comments submitted in File No. EW-2018-0078, developer offered (i.e., mandated by the SOC Renew Missouri wants if the developer signs it) contracts present "a

unique risk when prices or contract terms offered today, based on assumptions about the future . . . [are for] resources that the utility would not otherwise begin procurement of for many years or even a decade into the future . . . Since a [developer's] … resource is brought online when [the developer decides] it is available, rather than at the time of actual need, any opportunity to adjust to changing market conditions and provide customers with the lowest cost resource is lost."[6]

7. Second, Renew Missouri's proposal reflects a one-size-fits-all approach for estimating avoided costs for the entire State of Missouri when in fact different kinds of generation (including different kinds of renewable generation) are, well, different and the specific situations of each MPSC regulated utility is also materially different (unique RTO's, net capacity positions, resource portfolio diversity levels, etc.). This means that removing distinctions (and thus ignoring the differences) between the different technologies (gas, solar, wind, etc.) as well as unique situation of each utility (and their respective customers) is problematic and makes no sense. Utilities (when they need resources) may need different resources at different times and have unique operational realities that directly influence the most accurate method for estimating avoided costs. Thus, the Commission's rule should not prescribe a single avoided cost methodology and instead should provide flexibility to account for those differing needs as Staff's draft rule would allow.

8. Third, giving developers the ability to force whatever generation they choose to build onto the utility whenever (and wherever) they decide to build it could raise local distribution reliability and operational problems that the Renew Missouri proposal doesn't acknowledge, let alone address.

[6] *Comments of Union Electric Company d/b/a Ameren Missouri*, File No. EW-2018-0078, pp. 8-9, Oct. 13, 2017 (EFIS Item No. 14).

9. It is not just utilities that share these kinds of concerns. Indeed, customer representatives have some or all these concerns as well. As the Missouri Industrial Energy Consumers ("MIEC") summarized well in their comments, expressing concerns about, among other things, the use of SOCs for systems above 1,000 kilowatts and about mandated obligations under SOCs, "[w]hile it may be relatively straightforward to provide short-term avoided cost, there are many complexities associated with long-term contracts that do not lend themselves to 'standardization' or to a 'cookie cutter' approach."[7]

C. Missouri isn't North Carolina.

10. Renew Missouri in effect criticizes Missouri's level of solar development by comparing Missouri to North Carolina, suggesting that North Carolina has approached PURPA correctly but without the rule change it seeks, Missouri is approaching it incorrectly.

11. First, Renew Missouri's claim that Missouri and North Carolina have a "comparable . . . population profile" is not true. North Carolina's population is approximately 69% greater than Missouri's[8] and its electric load is also approximately 72% greater than Missouri's. Moreover, the entire state of North Carolina is short energy by approximately 2.25% while Missouri is long by approximately 11%.[9] In addition, and even more importantly,

[7] *Reply Comments of the Missouri Industrial Energy Consumers*, File No. EW-2018-0078, p. 2, Nov. 15, 2017 (EFIS Item No. 12)

[8] https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk; ; U.S. Energy Information Administration, Form EIA-860, Annual Electric Generator Report, U.S. Energy Information Administration, Form EIA-861, Annual Electric Power Industry Report, U.S. Energy Information Administration, Form EIA-923, Power Plant Operations Report and predecessor forms; Retail Sales of Electricity by State by Sector by Provider (EIA-861)

[9] EIA, *supra*.

Missouri's *legislature* has not made the policy decisions that were made in North Carolina that likely had a significant impact on solar development in that state.

12. From 2002 to 2016, North Carolina provided a 30% investment tax credit ("ITC") that was on top of the 35% federal ITC, meaning that tax credits alone cut the cost of a solar system by two-thirds – roughly twice as much of a tax benefit in North Carolina than was available in Missouri. That decision was made because the North Carolina legislature decided as a matter of policy that the state should further subsidize solar development. And while prior to 2017 North Carolina's approach to PURPA was more "generous" (from an independent power producer's perspective), in 2017 the North Carolina legislature reduced the maximum standard offer contract to 1,000 kilowatts (1 megawatt) and capped the term at 10 years.[10] Moreover, contrary to what Renew Missouri's proposal if adopted would do (raise the price developers would receive by using a 20-year avoided cost estimate, as discussed above), the North Carolina Public Utilities Commission has recently reduced the prices (i.e., the avoided cost rate) to be paid to developers with qualifying facilities under PURPA.

13. While a detailed point-by-point recitation of North Carolina's experience (versus Missouri's, including policy choices made there but not here) is beyond the scope of this Response, it suffices to say that it is over-simplistic at best to point to the North Carolina experience as showing a "Need for Rule Change" in Missouri.[11]

[10] There were other aspects of that legislation that the solar industry probably found to be appealing, but the point is that the *legislature made policy decisions* about solar development instead of its utility commission adopting one-sided rules favorable to solar developers.
[11] Renew Missouri Petition, p. 3.

D. Conclusion

14. The Commission's decision in this docket is not whether to enact the rule Renew Missouri wants it to enact. Rather, the decision is whether to start a formal rulemaking at all and, if one is to be started, where to begin that rulemaking. A formal rulemaking is not needed at all, but for the reasons given by the Staff in its Recommendation and as addressed in this Response, if there is to be one the starting point should be the Staff's proposed amendments.

Respectfully submitted,

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ATTORNEYS FOR UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the Staff of the Commission, the Office of the Public Counsel, and Renew Missouri via electronic mail (e-mail) on this 9th day of July, 2019.

/s/ James B. Lowery
James B. Lowery