BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Repository File Concerning Ameren Missouri's Submission of its 2011 RES Compliance Plan	)	**File No. EO-2011-0275**
In the Matter of a Repository File Concerning The Empire District Electric Company's Submission of its 2011 RES Compliance Plan	)	**File No. EO-2011-0276**
In the Matter of a Repository File Concerning Kansas City Power & Light Company's Submission of its 2011 RES Compliance Plan	)	**File No. EO-2011-0277**
In the Matter of a Repository File Concerning KCP&L-GMO's Submission of Its 2011 RES Compliance Plan	)	**File No. EO-2011-0278**

RENEW MISSOURI'S REPLY

This Reply responds to additional comments, filed on or about August 11, on Renew Missouri's original comments.

The RES compliance plan is an annual three-year plan in which the utility must demonstrate how it will comply with the RES. "The staff's report shall identify any deficiencies in the electric utility's compliance with the RES," 4 CSR 240-20.100((7)(D); and interested parties may also file comments. 20.100(7)(E). Obviously deficiencies must be rectified, and deficiencies may arise out of misinterpretation of the law and regulations. This makes the compliance plan dockets an appropriate forum for deciding the legal issues raised by Renew Missouri.

SOLAR EXEMPTION: EMPIRE DISTRICT

In the 2008 legislative session, while Proposition C was pending but before it was passed in November, the General Assembly enacted SB 1181 with an effective date of August 28, 2008. SB 1181 included what is now § 393.1050, RSMo, which purports to exempt Empire District from the solar target and solar rebate provisions of the RES.

Two Empire customers and a solar installation company brought a declaratory judgment action in Cole County Circuit Court seeking to overturn § 393.1050. That court dismissed the case for failure to exhaust administrative remedies. The Court of Appeals Western District agreed that primary jurisdiction is in the Commission. *Evans v. Empire District Electric Co.*, WD73376 (May 31, 2011).

Empire argued that the plaintiffs must file a complaint asking the Commission to compel Empire to file a tariff for the solar rebate. The Court of Appeals said, "Appellants are able to file a complaint" (slip opinion at 9); it did not say that a complaint is the only remedy. The issue is squarely presented here. Furthermore, a complaint regarding a tariff would not answer the question whether Empire is subject to the 2% solar carve-out.

Complaint cannot be the only remedy since decision of the issues is necessary in this case to determine whether Empire is in compliance with the RES.

A statute passed by the initiative process stands on the same ground as one passed by the legislature. *Labor's Educational and Political Club v. Danforth*, 561 S.W.2d 339, 343 (Mo. banc 1977). Prop C became effective the day it was passed, November 4, 2008. Missouri Constitution, Article III, § 51. Empire's attempt to exempt itself in advance from the RES was repealed by the RES, which encompasses all the IOUs including Empire.

REC BANKING: AMEREN, KCP&L, KCP&L-GMO

The utilities complain that they will be "punished" or "penalized" if they are not allowed to use RECs from 2008–10 to comply with the 2011 standard. Not at all. They are allowed to use energy from renewable resources that existed before the RES was passed. Since they built or entered into PPAs with those resources without having the RES in mind, they are not being cheated. The RES is a standard for energy generated in specified calendar years. RECs generated before 2011, the first of those years, do not comply.

REC banking is a carry-forward provision. Nothing in the Commission's rule is inconsistent with this forward-looking approach. "The RECs shall be retired during the calendar year for which compliance is being achieved" or the first three months of the following calendar year. 4 CSR 240-20.100(3)(J). The three-year REC lifetime serves a purpose analogous to this three-month carry-back: it lets the utilities offset their future (rather than past) obligations with RECs not needed in the current compliance year.

Staff points out (response, p. 7) that a date of November 4, 2008 was taken out of an early draft of the rule. That certainly does not prove that such a date should be understood to still be in the rule; quite the contrary. An unidentified "Stakeholder comment" ("[[Stakeholder comment]: why 11/4/08? May be better to remove this section and let it default to beginning of 2008]") likewise does not determine the meaning of the statute or the rule.

QUALIFYING HYDRO: AMEREN, EMPIRE DISTRICT

Renew Missouri's comments show that it is common usage, both in the energy industry and in the courts, for the terms "nameplate rating" and "nameplate capacity" to refer to the aggregate capacity of generators at a site. This is not a question of "binding authority." It is also

not an issue of plain meaning versus ambiguity. There are unambiguously two ways to use the term "nameplate rating."

The definition from EIA cited by Staff — "The rating **of a generator** (that is, its *nameplate capacity*)" (bold added) — is limited by its own terms. It does not disprove what Renew Missouri has already proved, that nameplate rating can be aggregate.

Staff, at page 6 of their response, assert that there is only one facility in Missouri that would qualify using the aggregate nameplate rating, and that therefore this more restrictive definition would not encourage renewable energy. On the contrary, you can't encourage what already exists. The RES means to encourage new generation. The Commission should define terms, where there is a choice of two definitions, in the way that best accomplishes that goal. Keokuk and Osage Beach have existed and will continue to exist without the help of the RES.

Ameren argues that this is a "collateral attack" on the RES rule. A rule is not like a final judgment that is res judicata and immune from collateral attack. The Commission can revisit its rules at any time. State ex rel. Dail v. PSC, 240 Mo.App. 250, 203 S.W.2d 491, 497 (WD 1947).

CONCLUSION

WHEREFORE Renew Missouri asks the Commission to reject the compliance plans as deficient in the foregoing respects and to order the utilities to correct these deficiencies.

Respectfully submitted,

/s/ Henry B. Robertson
Henry B. Robertson (No. 29502)
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, MO 63101-2208
Phone: (314) 231-418
Fax: (314) 231-4184
hrobertson@greatriverslaw.org

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply was served on all parties of record via electronic mail (e-mail) on this 22nd day of August, 2011.

/s/ Henry B. Robertson
Henry B. Robertson