

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

In the Matter of a Repository File)	
Concerning Ameren Missouri's Submission)	File No. EO-2011-0275
of its 2011 RES Compliance Plan)	

COMMENTS OF RENEW MISSOURI

The Missouri Coalition for the Environment, d/b/a Renew Missouri, is pleased to offer these comments on Ameren Missouri's RES Compliance Plan for 2011–2013, required by 4 CSR 240-20.100(7)(B).

I. 4 CSR 240-20.100(7)(B)1.A, Planned Actions to Comply

Ameren's compliance plan is contrary in major respects to the meaning and intent of the Renewable Energy Standard law.

A. Keokuk

Ameren proposes to meet the vast majority of its obligation with the 98-year-old Keokuk hydroelectric plant. The RES law includes as a renewable resource "hydropower...that has a nameplate rating of ten megawatts or less..." § 393.1025(5), RSMo. Ameren asserted at one of the roundtables in Case No. EW-2011-0031 that nameplate rating or capacity refers solely to the physical nameplate on a generator. The compliance plan says that Keokuk's aggregate capacity qualifies under the RES because each of the 15 generators is less than 10 MW.

The statute does not say "hydropower generator" rating, simply "hydropower ... nameplate rating." Nameplate is commonly used to refer to total or aggregate rating even when neither of those adjectives is used. This is the intent of the statute. Hydropower is limited

to 10 MW to reduce its environmental impact, along with the prohibition against “a new diversion or impoundment of water,” § 393.1025(5). It is certainly not the intent of the law to allow Keokuk to swallow up the renewable energy targets until they reach 10% in 2018.

Empire District Electric’s solar exemption statute, § 393.1050, applies to “any electrical corporation...which...achieves an amount of eligible renewable technology nameplate capacity equal to or greater than fifteen percent of such corporation’s total owned fossil-fired generating capacity...” Here “nameplate capacity” clearly refers to “aggregate” or “total” nameplate capacity even though neither of those words is used.

EDE continues this usage in Attachment 1 to its compliance plan, repeatedly using “nameplate capacity” to refer to aggregate capacity, as in, “Empire’s renewable energy nameplate capacity as of January 20, 2009 is 255 MW,” referring to the two Kansas wind farms with which it has PPAs (EDE compliance plan, p. 8).

Nameplate capacity can be used to refer to total US hydroelectric generating capacity, as in this paper for EIA by Reichenbach and Hankey, “Relicensing and Environmental Issues Affecting Hydropower,” p. ix,¹

In 1994, the hydroelectric power industry, including utility and nonutility facilities, operated around 4,500 units with 75.3 gigawatts of nameplate capacity at conventional facilities and 18.4 gigawatts at pumped storage facilities.

It is used by the Bureau of Reclamation to refer to Hoover Dam with its 17 turbines: “The plant has a nameplate capacity of about 2080 MW.”² Chelan County (Washington) PUD says of its 11-generator Rocky Reach Hydro Project: “Generator nameplate capacity is 1,300 MW.”³

¹ <http://tonto.eia.doe.gov/ftproot/features/hydro.pdf>

² <http://www.usbr.gov/lc/hooverdam/faqs/powerfaq.html>

³ <http://www.chelanpud.org/rocky-reach-hydro-project.html>

Nameplate rating has the same meaning, as when Tacoma Power gives the “Installed capacity (nameplate rating)” of its Cushman hydro project.⁴ Nameplate capacity is defined as “full-load rating” by the Bureau of Reclamation.⁵ “Capacity rating” has been defined as “nameplate rating.”⁶

Examples abound of “nameplate capacity” being used for aggregate capacity. The NREL’s Clean Energy Data Book uses it for total US generating capacity.⁷ The American Public Power Association uses it for total capacity by fuel type and utility type.⁸ The Department of Energy’s EERE “2009 Renewable Energy Data Book” uses it for total US hydro (slide 88) and many other generation types.⁹

Legal authority is to the same effect. In Don’t Waste Oregon Committee v. Energy Facility Siting Council, 320 Or. 132, 881 P.2d 119, 124 (1994), the “total generating capacity” of a plant is defined as the “nominal or nameplate capacity.” Another opinion of the same court refers to the “nameplate capacity” of the combined generating facilities of two separate dams. Portland General Electric Co. v. State Tax Commission, 249 Or. 239, 437 P.2d 827, 829 (1968).

In Philadelphia Corp. v. Niagara Mohawk Power Corp., 723 N.Y.S.2d 549, 550–1 (A.D. 2001), the opinion refers to the “nameplate capacity” as the total capacity of a “run of the river” hydro plant that originally had three generators, later replaced by a single large turbine.

⁴ <http://www.chelanpud.org/rocky-reach-hydro-project.html>

⁵ <http://www.expertglossary.com/water/definition/generator-nameplate-capacity>

⁶ <http://www.puc.state.tx.us/rules/subrules/electric/25.109/25.109.doc>

⁷ http://www.nrel.gov/applying_technologies/state_local_activities/energy_data_book/#

⁸ <http://appanet.cms-plus.com/files/PDFs/GenerationStatistics.pdf><http://appanet.cms-plus.com/files/PDFs/GenerationStatistics.pdf> (slides 1–3, 6, etc.)

⁹ http://www1.eere.energy.gov/maps_data/pdfs/eere_databook.pdf

The hydropower assets of two utilities are described thus in State ex rel. Utilities Commission v. Edmisten, 40 N.C.App.109, 252 S.E.2d 516, 521 (1979): “Tapoco's two North Carolina facilities have a nameplate capacity of 155,000 KW; Nantahala's eight plants (subject to New Fontana Agreement) have nameplate capacity of approximately 98,000 KW.”

In Madison Gas & Electric Co. v. USEPA, 25 F.3d 526, 529 (7th Cir. 1994), the terms “aggregate nameplate capacity” and “nameplate capacity” are used interchangeably.

When a word has an uncertain meaning, courts look to the subject matter of the statute, the object it is meant to accomplish, and the consequences of any proposed interpretation. State ex rel. Slinkard v. Grebe, 249 S.W.2d 468, 470 (Mo.App. ED 1952). The RES allows only small hydro in order to prevent the environmental impacts of dams; the 10 MW capacity limit is aggregate. The interpretation proposed by EDE and Ameren allows this intent to be defeated by applying the limit to large numbers of small generators, as at Keokuk. Of the two possible meanings of “nameplate rating,” total rating, not individual generator rating, is the correct one.

The Commission should (a) disallow Keokuk as a renewable resource and (b) start a proceeding to amend 4 CSR 240-20.100(1)(K)8, to make clear that aggregate rating is the intended meaning.

B. REC Banking.

KCPL, GMO and Ameren all avail themselves of retroactive REC banking, claiming that they can meet the 2011 RES target with RECs they’ve collected since January 1, 2008. This is at odds with the meaning and intent of the RES.

“An unused credit [REC] may exist for up to three years from the date of its creation.” § 393.1030.2, RSMo. On this basis Ameren says that its banked RECs from Keokuk and its wind PPA from 2008–2010 enable it to meet the requirements for 2011–2013 (compliance filing, pp. 6–7, 9, 10).

However, the statute also provides: “Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility’s sales: (1) No less than two percent for calendar years 2011 through 2013...” § 393.1030.1, RSMo.

Therefore renewable energy must actually “constitute” the requisite portion of sales for a given calendar year. The REC banking provision allows leftover RECs to carry over to a subsequent year. It does not allow old RECs to carry forward from a time when the portfolio standard did not even exist. The standards begin in 2011; therefore all RECs used for compliance must originate beginning January 1, 2011, not January 1, 2008. RECs created before 2011 could not represent energy that “constituted” a portion of sales beginning in 2011.

It also makes no sense to speak of 2008 RECs as “unused” when there was nothing in 2008 to use them on. In saying that “An unused credit may exist for up to three years from the date of its creation,” the statute refers to RECs that could have been used for RES compliance but were surplus to a utility’s needs in the year of their creation. The only use within the scope of the statute is use for compliance with the statute: “A credit may be used only once to comply with sections 393.1020 to 393.1030...” and, “An electric utility may not use a credit derived from a green pricing program.” (§ 393.1030.2, RSMo.) “Unused” does not refer to RECs sitting

in a REC bank account (something whose existence in Missouri was not even contemplated on January 1, 2008) waiting for a RES to be enacted.

The RES grandfathers in existing renewable generating assets. It does not follow that it grandfathers the energy generated in the past. The purpose of a RES is to foster renewable energy going forward. Retroactive REC banking amounts to a “time out” — based on three years of past generation, the utilities claim a right to take three years off. Those three years happen to be the first compliance period. Retroactive REC banking effectively moves that period back in time to 2008–10, contrary to the plain numbers in the law—2011–2013.

The utilities’ perverse version of REC banking is a lamentable attempt to escape the law through a loophole they have created with the flimsiest of logic.

4 CSR 240-20.100(7)(B)1.G, Environmental Impact

Ameren says that “to our knowledge” the facilities it is relying on for compliance have received all necessary permits (compliance filing, p. 17). This hardly amounts to what the rule requires: “Verification that the utility has met the requirements for not causing undue adverse air, water, or land use impacts pursuant to subsection 393.1030.4. RSMo, and the regulations of the Department of Natural Resources.”

The statute charges DNR with devising a certification process. § 393.1030.4. The DNR rule allows either the utility or the generation facility to initiate the process. 10 CSR 140-8.010(4)(C)3. This does not condone willful ignorance on the part of the utility. Evidently Ameren has no idea whether the wind farm with which it has a PPA is causing undue environmental impacts or is in compliance with environmental laws.

Under the Commission rule, verification is the duty of the utility. The compliance plan should be rejected until Ameren provides the necessary verification. Conclusory statements like “to our knowledge” do not amount to verification, especially when it is clear that the utility has made no inquiry but has simply assumed that the responsibility lies elsewhere.

Conclusion

Renew Missouri asks the Commission to:

- Find that retroactive REC banking is not allowed by the RES;
- Find that Keokuk does not qualify as a renewable energy resource;
- Order Ameren to commence the DNR certification process for its renewable energy resources or investigate whether the facility owners/operators have done so;
- Open a docket to amend the RES rule to prevent the abuses identified above; and
- Take whatever further action the Commission deems necessary to ensure that the compliance plan conforms to the statute and rule.

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