

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

In the Matter of Ameren Missouri's Request for a Waiver)
Regarding its Renewable Energy Standard Compliance.) Case No. EO-2012-0351

RESPONSE TO COMMENTS

COMES NOW Union Electric Company d/b/a Ameren Missouri (Company or Ameren Missouri), and in response to the comments filed by the Missouri Department of Natural Resources (DNR), Renew Missouri, et al (Renew Missouri), and Wind on the Wires, et al (Wind on the Wires), respectfully states:

1. On April 16, 2012, Ameren Missouri submitted its Renewable Energy Standard (RES) Compliance Plan (RES Plan) for calendar years 2012 through 2014 and its RES Compliance Report (RES Report) for 2011.

2. On May 31, 2012, DNR, Renew Missouri, Wind on the Wires filed Comments on Ameren Missouri's RES Plan. In addition, the Staff of the Missouri Public Service Commission (Staff) filed its Report on the Company's RES Plan and RES Report.

STAFF REPORT

3. The Staff Report found no deficiencies with either the RES Plan or the RES Report, although it did identify a variance that Ameren Missouri requested in its previous RES Plan filing and which it should have requested in this filing. That is, a variance from 4 CSR 240-20.100(7)(B)1F, the portion of the Commission's rules which requires the Compliance Plan to provide a "...detailed explanation of RES retail impact limit calculated in accordance with section (5) of this rule." Section (5) of the rule requires a highly detailed calculation of a revenue requirement which excludes renewable energy sources and includes costs associated

with greenhouse gas costs. The impact of these adjustments is that the calculation, by design, produces a larger revenue requirement than the Company's last Commission approved revenue requirement. As was true in the Company's filing last year, Ameren Missouri's cost to comply with the RES for this year and the next two calendar years is significantly less than 1% of its current revenue requirement. Accordingly, the extra calculations are not necessary to ensure Ameren Missouri's compliance plan is obtainable within the statutory expenditure cap for 2011, 2012 and 2013. Ameren Missouri requests the Missouri Public Service Commission (Commission) grant it a variance from 4 CSR 240-20.100(7)(B)1F and, instead, allow the Company to demonstrate that the costs of RES compliance is less than 1% of its last Commission ordered revenue requirement. The Company also requests that this variance be a continuing variance until such time as the cost of compliance is more than 1% of its current revenue requirement.

DNR

4. DNR's comments do not allege that Ameren Missouri is in violation of the RES or the related Commission regulations. In fact, DNR certified all of the renewable energy sources as set forth in the Company's RES Report. DNR's comments do point out that Ameren Missouri had yet to seek certification for any new renewable generating facilities identified in its RES Plan. This is true and the Company will seek certification after the new renewable generation facility in Maryland Heights, Missouri is operational, as is appropriate.

5. DNR's second comment was more significant. DNR states, "In passing Proposition C, Missouri voters communicated their interest in more renewable energy than had been previously developed in Missouri by 2008. This first set of filings demonstrates that

Missouri's renewable energy standard is not creating significant additional renewable energy development."

6. The Company takes issue with this statement. There is no basis to believe that Missouri voters voted for "more renewable energy." The RES does not require any utility to add any amount of new renewable energy. It only sets forth the percentage of energy generation (or an associated level of RECs) which must come from renewable energy sources. This can be demonstrated by looking at the ballot initiative as well as by examining the law itself.

5. The ballot initiative did not use the word new. It read, "Shall Missouri law be amended to require investor-owned electric utilities to generate or purchase electricity from renewable energy sources such as solar, wind, biomass and hydropower with the renewable energy sources equaling at least 2% of retail sales by 2011, increasing incrementally to at least 15% by 2021, including at least 2% from solar energy; and restricting to no more than 1% any rate increase to consumers for this renewable energy?"¹

6. Beyond the ballot initiative, the more detailed language of the RES itself does not require new renewable energy sources. The statute requires Ameren Missouri to generate or purchase electricity (or to purchase Renewable Energy Credits, known as RECs) from renewable energy resources at a level that constitutes a set portion of its sales. The percentage required for 2011 was two percent. Ameren Missouri already had enough renewable generation to comply with the two percent requirement. The fact that the Company was in compliance without making additional expenditures is not a failure or a shortcoming of any type. In fact, rather than bemoan this reality, the state should view this as a positive as it demonstrates that the Company's customers have been receiving the benefits of renewable energy for many years.

¹ EO-2011-0275, Erratum of Renew Missouri, September 2, 2011, p. 2.

7. Finally, the Company would note that it has brought on new renewable generation in order to comply with the future, increasing requirements and the solar specific requirements of the RES. Ameren Missouri is testing different solar technologies at its St. Louis offices and making the information it gathers available to customers on its website. The Company purchases solar RECs from its customers with solar generation. The Company will place in service a facility that converts landfill gas to electricity. This facility is the first of its kind in Missouri and represents a positive step in the development of renewable energy in Missouri. The Company would not dismiss these developments as unimportant, as the comments of DNR could be interpreted to do.

RENEW MISSOURI AND WIND ON THE WIRES

7. Renew Missouri and Wind on the Wire (together, Renewable Businesses) allege the same three violations of the RES, none of which have any foundation which would allow the Commission to adopt their interpretation and each of which would require the Commission to change its governing regulations, a process that cannot occur in this case. The Commission should recognize that the Renewable Businesses have a business interest in forcing Ameren Missouri (and other utilities) to purchase renewable energy from them and look upon this statute as a way to pass along the costs of their business to utility customers, regardless of whether that cost is the best way to serve utility customers. In this case, for example, banking RECs for three years beginning in 2008 (discussed more below) is consistent with the statutory language and prevents the flow of additional costs (without additional benefit) to Ameren Missouri's customers. This is not to say that the comments of the Renewable Businesses should be ignored, but they certainly should be viewed through the appropriate lens.

REC BANKING START DATE

8. The first issue raised by the Renewable Businesses is when Ameren Missouri can begin banking RECs to use for future compliance. The Renewable Businesses take the position that banking cannot start until January of 2011 while the Company believes that authority began in 2008.

9. The Renewable Businesses do not deny that the Commission's rules allow utilities in Missouri to bank RECs for three years.² Nor does their argument deny that the statute does not provide a start date for that banking. Additionally, the Commission's rules do not explicitly contain a date before which the initial banking may not occur. However, because the statute limits REC banking to three years, it creates a natural start date of January 1, 2008 (as the requirement to provide a percentage of a utility's electric power from renewable resources began January 1, 2011). For the Commission to now restrict banking to less than three years is not supported by the language of the law and would effectively punish Ameren Missouri for its early investment in renewable energy. Under the Renewable Businesses interpretation, Ameren Missouri could use RECS associated with renewable generation in 2011 to comply with its RES requirements in 2014, but not use RECs associated with 2008 renewable generation to comply with 2011 RES requirements. This distinction does not appear in the law and the Commission should resist the call, based solely upon the economic interest of the parties promoting it, to impose such a limitation.

10. The Renewable Businesses attempt to tie the start date for banking to the start date of the RES portfolio requirement. Again, there is no basis for this tie. RECs were not

² 4 CSR 240-20.100(1)(J).

created by this law; RECs existed prior to this law.³ The Office of the Public Counsel agrees with Ameren Missouri's interpretation. In his opening statement at the hearing held in Case No. EO-2011-0275 (0275), the Public Counsel explained this issue as follows:

For example, and I'm just looking at the definitions in Chapter 386. 386 defines "sewer system" as pipes, pumps, canals, lagoons, et cetera, et cetera, et cetera. It doesn't anywhere explicitly say that it means pipes placed into service or pipes manufactured after the effective date of the statute." He continued, "[I]f you look at a statute, any statute, for example, if the puppy mill statute had created a definition of a kennel, a kennel manufactured before the date of the statute that meets the definition is a kennel...[T] statute doesn't create a kennel any more than it creates a REC. RECs existed; the statute simply recognizes what can be done with them, even though they existed before the statute existed."⁴

11. Renew Missouri also argues that retroactive REC banking should not be allowed because it violates the requirement that renewable energy must "constitute" a portion of sales for a given time period.⁵ However, Renew Missouri ignores language in that same portion of the statute which follows the language they quote which explicitly allows the utility to comply in whole or in part by using RECs. "A utility may comply with the standard in whole or in part by purchasing RECs."⁶ If the law explicitly says RECs can be used as a method of compliance, the rest of the statute cannot be read to exclude RECs as a method of compliance.

12. The Commission Staff in their response to Renew Missouri in 0275, points out that Renew Missouri fully participated in the Commission's rulemaking proceeding and did not offer any comment on whether banking should or should not be allowed, nor did it comment on what specific date banking should be allowed to begin.⁷ Staff's comments tracked through the

³ For example, Ameren Missouri has been purchasing RECs for several years for its Pure Power program.

⁴ Case No. EO-2011-0275, Tr. p. 150, l. 13 through p. 151, l. 5.

⁵ Section 393.1030.1 RSMo.

⁶ Id.

⁷ Case No. EO-2011-0275, Staff Response to Comments of Renew Missouri, p. 7-8.

four different versions of this portion of the Commission regulations, even pointing to the fact that the question was raised as to which year banking should begin, and Renew Missouri did not raise a concern with it starting in 2008. It was only after Renew Missouri realized that banking would remove the need for utilities to purchase RECs from the solar and wind businesses which it represents did the 2008 start date become a concern and a misinterpretation of the statute.

QUALIFICATION OF KEOKUK AS A RENEWABLE ENERGY RESOURCE

13. The Renewable Businesses allege that the Keokuk hydroelectric plant should not be counted as a renewable energy resource, despite the clear language of the RES statute. The Renewable Businesses' arguments ignore the on-point and controlling law; that is, the explicit language of the statute. The statute uses the phrase "nameplate rating." As is discussed in detail below, that term is specific to a generator rather than to a plant. This fact is confirmed in DNR's rules, which establishes that any hydroelectric "generator" that has a "nameplate rating" of ten (10) megawatts or less is a renewable energy resource.⁸ Also consistent with the definition found in the RES statute, the Commission's rules define a "Renewable Energy Resource" as including "Hydropower...that has generator nameplate ratings of ten (10) megawatts or less."⁹

14. The statute and the rules refer to the "nameplate rating" of each generator in a power plant because **only generators have nameplate ratings**. This is borne out by standard industry usage of the phrase "nameplate rating." For example, the Edison Electric Institute's (EEI) Glossary of Electric Industry Terms defines "nameplate rating" as "The full-load continuous rating of a generator prime mover or other electrical equipment under specified conditions as designated by the manufacturers. It is usually indicated on a nameplate attached

⁸ 10 CSR 140-8.010(2)(A)8.

⁹ 4 CSR 240-20.100(1)(K)(8) and Section 393.1025(5).

mechanically to the individual machine or device.”¹⁰ The Keokuk Plant contains 15 generators, each of which has a different nameplate attached, as shown by the pictures of the nameplate attachments of two of the generators, included in Exhibit 1 to this Response. Nameplate rating does not, as the Renewable Businesses assert, commonly mean an aggregate rating for the entire power plant.

15. Both the Commission’s rules and DNR’s rules contain definitions which make it clear that one is to look at the nameplate rating of each generator in use at a given plant site. There is nothing in the statute nor in these rules that requires aggregation of the nameplate ratings from multiple generators, or that even suggests that such aggregation is appropriate. The EEI glossary also defines “generator,” as follows: “A machine which transforms mechanical energy into electric energy.”¹¹ *Webster’s Dictionary* has a very similar definition: “A machine by which mechanical energy is changed into electrical energy.”¹² A power plant is not a “machine.” A power plant is comprised of buildings, structures, machinery, roads, fences, and other components. A “generator,” however, is a machine, and it is the generator and the generator alone that changes mechanical energy into electrical energy. Ameren Missouri relied upon the Commission and DNR definitions to direct its RES compliance efforts. The Commission cannot change the rules under which the Company must comply AFTER the compliance period has ended. The Commission cannot change it’s, or DNR’s, definition of what qualifies as renewable hydropower as is being suggested by the Renewable Businesses.

16. Renew Missouri, in offering nothing more than a cut-and-paste from its comments from a year ago, cites various non-controlling sources in its attempt to support its argument, but

¹⁰ Edison Electric Institute, Glossary of Electric Industry Terms, April 2005 p. 99.

¹¹ *Id.*, p. 714.

¹² Merriam-Webster, 2011.

reliance on those sources is inappropriate. In fact, at times, the citation made by Renew Missouri doesn't support its assertion of what "nameplate rating" means. For the most part, Renew Missouri presents definitions of the phrase "nameplate capacity" without demonstrating why it is an equivalent term to "nameplate rating." Under questioning from the Commission, the attorney for Renew Missouri admitted that the RES statute does not use the phrase "nameplate capacity."¹³ If anything might be taken from Renew Missouri's comments, it could be that "nameplate capacity" refers to the entire plant while "nameplate rating" refers to a specific generator (although some of the citations tie even "nameplate capacity" to a single generator). Either way, the statute does not use the phrase "nameplate capacity."

The first three footnotes in Renew Missouri's comments cite to articles by the Energy Information Administration, the US Department of Interior and the Rocky Reach Hydro Project. Clearly, in each, the reference is to "nameplate capacity." These articles, while interesting, do not address or otherwise offer anything definitive to the discussion of how "nameplate rating" should be interpreted. These three citations were also included in Renew Missouri's comments in 0275 and the fact that they do not use the word "nameplate rating" was brought out by the Commission at the 0275 hearing.¹⁴

The fourth footnote in Renew Missouri's comments is a repeat of footnote three, an error pointed out by the Commission in the 0275 hearing and not corrected by Renew Missouri in its current comments.¹⁵

The fifth footnote in Renew Missouri's comments is to a website named Expert Glossary. As pointed out by the Commission in 0275, Renew Missouri's comments left out key portions of

¹³ Case No. EO-2011-0275, T. p. 45, l. 15-20.

¹⁴ Id., p. 52, l. 3-17.

¹⁵ Id., p. 52, l. 18-23.

the definition. Specifically, the definition is specific to a generator, not to the entire plant. Renew Missouri cites the definition as “full-load rating,” while the definition in its entirety says, “The full-load continuous rating **of a generator**, prime mover, or other electric power production equipment under specific conditions as designated by the manufacturer. **Installed generator nameplate rating is usually indicated on a nameplate physically attached to the generator.** (Emphasis added). This definition is consistent with the definition adopted by the Commission and by DNR and is the opposite of what Renew Missouri claims the definition says. This discrepancy was brought out at the 0275 hearing¹⁶ but ignored by Renew Missouri in its current comments.

The sixth footnote is to the Texas PUC’s rules for the Registration of Power Generation Companies and Self-Generators. In the definition section, there is a specific definition of “nameplate rating.” That definition reads, “The full-load continuous rating **of a generator** under specified conditions as designated by the manufacturer.” (Emphasis added). Again, this definition was pointed out to Renew Missouri at the 0275 hearing,¹⁷ but it is again mis-cited in Renew Missouri’s comments in this case. Another section of this document discusses “capacity ratings” and defines them as including “Renewable resource generating units...rated at the nameplate rating.” This is more supportive of the Commission and DNR’s definitions than of Renew Missouri’s arguments. Again, pointed out by the Commission in the 0275 case¹⁸ and, again, the exact opposite of the interpretation Renew Missouri wants this Commission to adopt in this case.

¹⁶ Id., p. 54, l. 10 through p. 57, l. 8.

¹⁷ Id., p. 57, l. 17 through p. 60, l. 3.

¹⁸ Id., p. 60, l. 12 though p. 61, l. 9.

The seventh footnote is to the Clean Energy Data Book, which uses the phrase “nameplate capacity” but does not provide a definition of it or of “nameplate rating.”

The eighth footnote is to an Ameren Public Power Association’s Annual Directory & Statistical Report, which contains no definition of “nameplate rating” or “nameplate capacity” at all.

17. Renew Missouri continues on to cite several court cases that it claims demonstrate the argument that “nameplate rating” or “nameplate capacity” means the entire plant rather than one generator. A review of the cited cases reveals that, again, Renew Missouri’s point is not supported by the cases cited.

In Don’t Waste Oregon Committee v. Energy Facility Siting Council,¹⁹ a case dealing with natural gas plants rather than hydro-electric plants, the court does not use the phrase “nameplate rating” but instead discusses the “nameplate capacity” of two plants together. The court defined “total generating capacity” as “...the sum of the electricity that the plant can bring for sale to the power grid plus the electricity required to operate the plant – and is referred to as the nominal or nameplate capacity.” This, coupled with the definition of “nameplate rating provided by Ameren Missouri,” disproves Renew Missouri’s argument that “nameplate rating” and “nameplate capacity” are synonymous terms.

In Portland General Electric Co. v. State Tax Commission,²⁰ the reference is to “nameplate capacity in kilowatts of the generation facilities,” indicating that the terms “nameplate rating” and “nameplate capacity” are not synonymous terms.

¹⁹ 320 Or. 132, 881 P.2d 119, 124 (1994).

²⁰ 249 Or. 239, 437 P.2d 827, 829 (1968).

In Philadelphia Corp. v. Niagara Mohawk Power Corp.,²¹ the court explicitly referenced the “nameplate capacity of the plant.” Again, breaking the claim of Renew Missouri that “nameplate rating” and “nameplate capacity” have the same meaning.

In State ex rel. Utilities Commission v. Edmisten,²² even as cited by Renew Missouri, clearly is citing the “nameplate capacity” of multiple plants.

In Madison Gas & Electric Co. v. USEPA,²³ the court defines “nameplate capacity” as “capacity figure stamped on a generating unit by its manufacturer and includes the capacity necessary to power the unit itself.” This is consistent with the Commission’s and DNR’s definition and appears to contradict the argument being asserted by Renew Missouri.

Not a single one of these definitions or case citations proves Renew Missouri’s point and the majority of them are supportive of the current Commission and DNR definition. Nameplate rating deals with a generator, not with the entire hydro plant.

18. While the Company believes that the definitions contained in the RES statute are clear, if there was ambiguity, it has now been resolved in the rule adoptions by the Commission and DNR. Both adopted their rules pursuant to the statutory process for adopting rules including publication, notice and a hearing. Renew Missouri participated in the Commission rulemakings and chose not to participate in the DNR rulemaking. Renew Missouri did not oppose the proposed definitions and thus missed their opportunity to argue for a different definition of renewable energy resource. They are attempting to use Ameren Missouri’s RES Plan as a vehicle to reargue the rules, something which cannot be done in this case.²⁴

²¹ 723 N.Y.S.2d 549, 550-1 (A.D. 2001).

²² 40 N. C.App 109, 252 S.E.2d 526, 529 (1979).

²³ 25 F.3d 526, 529 (7th Cir. 1994).

²⁴ However, given the language in the RES statute, adoption of a different definition for renewable energy resources in the rules would not have been permissible even if Renew Missouri had proposed such a definition.

19. Renew Missouri also cites another portion of the RES statute, which contains an exemption applicable to The Empire District Electric Company (Empire), in an attempt to provide an analogy as to why the aggregation of the nameplate ratings of all the generators at a plant site should be used instead of the nameplate rating of each generator. The RES statute says the exemption applies to a utility that “...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...”²⁵ Renew Missouri argues that “nameplate capacity” in this context refers to the aggregate of the nameplate ratings of all of the utility’s generators, even without directly saying so, and we agree – that phrase does refer to the aggregate capacity of the utility, because given what this particular provision is trying to do, it must. Indeed, this provision proves our point because Renew Missouri ignores that quoted portion of Section 393.1050 itself *applies to a utility as a whole*. Consequently, the provision makes no sense unless a comparison of the “total” nameplate capacity of the utility as a whole is made to the “total” fossil fuel capacity of the utility as a whole. In other words, a *utility’s* “nameplate capacity” has to be the sum of the nameplate ratings for all of that utility’s generators. In contrast, the definitions of “renewable energy resource” discussed above were not promulgated by reference to a utility as a whole, and there is nothing in those definitions that suggests aggregation of the nameplate ratings of multiple generators within a single power plant, or across a utility’s system as a whole.

20. In summary, Comments of the Renewable Businesses are not, as they should be, a commentary on whether Ameren Missouri’s RES Plan meets the requirements of the statute and rules. Rather, their Comments are an attempt to convince the Commission to adopt definitions

²⁵ Section 393.1050 RSMo.

different from those contained in the statute. Ameren Missouri's RES Plan is an explanation of how Ameren Missouri intends to comply with the law *as written*. Ameren Missouri is not required to comply with the law as Renew Missouri wishes it had been written.

UNBUNDLED RECS

21. The Renewable Businesses complain that Ameren Missouri purchased RECs from solar producers located outside of Missouri in order to satisfy the solar set-aside portion of the RES. They point to the portion of the statute that states "the portfolio requirements shall apply to all power sold to Missouri consumers..."²⁶ and argue that means that only Missouri renewable power qualifies under the statute. They misread the statutory language. The portfolio requirement is the percentage that is multiplied by the amount of power the utility generates or purchases to serve Missouri consumers in order to determine the amount of renewable generation (or RECs) needed. So the amount of power generated or purchased to serve Ameren Missouri's customers is multiplied by 2 percent for 2011. That result is the amount of renewable generation or RECs (as the next sentence in the statute explicitly allows) which Ameren Missouri is required to obtain. The interpretation of the Renewable Businesses would moot the sentence about RECs because they could never be used to comply with the statutory requirements.

22. Further, to adopt this interpretation would be nonsensical because it would render meaningless the portion of the statute which awards Missouri based renewable generation to count as 1.25 KWhs for purposes of compliance. If all generation had to be located in Missouri, there would be no need to establish an incentive to use Missouri based generation. Again, it is the economic interests of the Renewable Businesses driving this argument rather than a careful examination of the language of the law.

²⁶ Section 393.1030.1

23. As the Commission is aware, this argument has previously been resolved. The interpretation that ties RECs to energy production was rejected by JCAR,²⁷ prompting the Commission to withdraw that portion of the rules²⁸ and has further been rejected by the Cole County Circuit Court.²⁹ The Company asks the Commission to take administrative notices of these documents.

24. Finally, as is true of the majority of the other arguments made by the Renewable Businesses, this comment would require the Commission to modify its rules. There is no requirement for the renewable energy resources to be located in Missouri. The sole question before the Commission in this case is whether Ameren Missouri has complied with the RES statute and rules interpreting the RES statute as written.

CONCLUSION

25. The issue before the Commission in this case is not whether a rule should be changed or even if a rule could be changed to better suit the economic interest of any individual or group of renewable energy businesses. The issue is whether or not Ameren Missouri has complied with the RES statute and its RES regulations for 2011.

WHEREFORE, Ameren Missouri asks the Commission to find its 2011 RES Report and its 2012-2014 RES Plan are consistent with Missouri law.

²⁷ EX-2010-0169, JCAR letter to Missouri Secretary of State, July 1, 2010.

²⁸ EX-2010-0169, Order Withdrawing Geographic Sourcing Provisions (2)(A) and (2)(B) of 4 CSR 240-2-.100 Pursuant to the Actions of JCAR.

²⁹ State ex rel. MEDA, MIEC, Empire Dist. Electric Co. & AmerenUE v. MPSC, Nos. 10AC-CC00511, 10AC-CC00512, 10AC-CC00513 & 10AC-CC00536 (Cole Co. Cir. Ct., December 27, 2011).

Respectfully Submitted,

/s/ Wendy K. Tatro

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**ATTORNEYS FOR UNION
ELECTRIC COMPANY d/b/a
AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 15th day of June, 2012, to all parties on the Commission's service list in this case.

/s/ Wendy K. Tatro