

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

In the Matter of Ameren Missouri's 2012)	
Renewable Energy Standard Compliance)	<u>File No. EO-2013-0462</u>
Report)	

STAFF RECOMMENDATION TO APPROVE REQUEST FOR WAIVER

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and files this *Staff Recommendation To Approve Request For Waiver* with the Missouri Public Service Commission ("Commission"), respectfully stating the following:

Background and Recommendation

1. On April 15, 2013,¹ Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri"), filed its *Renewable Energy Standard Compliance Report And Request For Waiver* ("Request For Waiver"). The *Request For Waiver* requests the Commission waive a portion of the Commission's Renewable Energy Standard (RES) rules, in particular, Rule 4 CSR 240-20.100(7)(A)1.I., for the Renewable Energy Credits (RECs) purchased from Ameren Missouri's customers and those purchased from aggregators lawfully registered in another renewable energy registry, such as the Western Renewable Energy Generation Information System (WREGIS).

2. On April 16, the Commission issued its *Order Directing Notice And Setting Filing Deadlines*, directing any person or entity wishing to respond to Ameren Missouri's *Request For Waiver* to do so no later than April 25.

3. Attached hereto is Staff's *Memorandum* recommending the Commission approve the Company's *Request For Waiver* for good cause shown, because the

¹ All dates herein refer to calendar year 2013, unless otherwise specified.

information Ameren Missouri requires from customer-owned facilities on Standard Offer Contracts, as well as the registration of the RECs in another renewable energy registry, meets the intent of the requirements of Rule 4 CSR 240-20.100(7)(A)1.I. To have Ameren Missouri provide the information in this instance would be onerous and duplicative of work completed through the Standard Offer Contracts, or the work completed by the renewable energy registries that specialize in the verification of RECs.

Analysis

4. Rule 4 CSR 240-20.100(7)(A)1.I. requires that an electric company submit as part of its Annual RES Compliance Report certain information pertaining to the acquisition of energy and/or RECs from a resource not owned by the company, including:

(I) Name, address, and owner of the facility; (II) An affidavit from the owner of the facility certifying that the energy was derived from an eligible renewable energy technology and that the renewable attributes of the energy have not been used to meet the requirements of any other local or state mandate; (III) The renewable energy technology utilized at the facility; (IV) The dates and amounts of all payments from the electric utility to the owner of the facility; and (V) All meter readings used for calculation of the payments referenced in part (IV) of this paragraph....

Rule 4 CSR 240-20.100(7)(A)1.I(I) through (V).

5. 4 CSR 240-20.100(10) states “Upon written application, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of this rule for good cause shown.”

6. Although without a precise definition, good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”² Similarly, “good cause” has also been judicially defined as a

² *Black’s Law Dictionary* 692 (6th ed. 1990).

“substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”³

7. Of course, not just any cause or excuse will do. To constitute good cause, the reason or excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁴ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁵

8. Staff recommends the Commission can find good cause to grant a waiver of the rule requirements for Ameren Missouri’s customer-owned renewable energy facilities. When Ameren Missouri and customers enter into Standard Offer Contracts for the purchase of solar RECs, the Company obtains the information required under the rule. Thus, Staff has access to the information should it be necessary to conduct a review.

9. Staff also recommends the Commission find good cause to grant a waiver of the requirements for RECs purchased from aggregators lawfully registered in another renewable energy registry. Ameren Missouri provided the operating procedures of WREGIS as part of File No. EO-2012-0150, and Staff has reviewed them. Staff requested and reviewed the updated operating procedures of the North American Renewables Registry (NAR) and has included the procedures as an attachment to the *Memorandum*. Because the information required for the registration of RECs in

³ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁴ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁵ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

WREGIS or NAR is similar to the information required by the Commission's rule, the intent of the Commission's rule is met in this instance.

10. Staff has verified that Ameren Missouri filed its calendar year 2012 annual report. Ameren Missouri still owes the final quarter payment for the fiscal year 2013 assessment.

11. Staff is not aware of any other matter before the Commission affected by this file, or that a decision by the Commission will affect.

WHEREFORE, the Staff recommends that the Commission grant Ameren Missouri a limited waiver from the requirements of Rule 4 CSR 240-20.100(7)(A)1.I. for the RECs purchased from Ameren Missouri's customer-owned facilities and those purchased from aggregators lawfully registered in another renewable energy registry.

Respectfully submitted,

/s/ Jennifer Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically on this **25th day of April 2013**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Jennifer Hernandez