BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's 2015 RES Compliance Report and Its 2016-2018 RES Compliance Report	)))	File No. EO-2016-0286

COMMENTS OF RENEW MISSOURI

COMES NOW Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), by and through its undersigned counsel, pursuant to 4 CSR 240-20.100(8)(E) and the Commission's April 16, 2016 *Order Directing Notice and Setting Filing Deadline*, and submits these comments regarding Union Electric Company d/b/a Ameren Missouri's ("Ameren") annual compliance with the requirements of Missouri's Renewable Energy Standard.

COMMISSION'S ATHORITY TO ADDRESS DEFICIENCIES

Utilities filed their 2015 RES Compliance Reports and 2016-2018 RES Compliance Plans on April 15, 2016. This marks the fifth year in which the Commission has had the opportunity to review utilities' progress toward the requirements of Missouri's Renewable Energy Standard (§§393.1025-1030, RSMo).

Unlike in years past, the Commission now has express authority to direct utilities to take action on alleged deficiencies and other concerns as part of this comment process. In the recent revisions to its own rule at 4 CSR 240-20.100, the Commission added the following provision to Section (8) of its RES rule: "The Commission may direct the electric utility to provide additional information or to address any concerns or deficiencies identified in the comments of staff or other interested persons or entities." 4 CSR 240.20.100(8)(B)1.F.

These comments request that the Commission take all actions within its authority to remedy the deficiencies identified below. We request that the Commission consider this course of action as an alternative to the more formal complaint process governed by 4 CSR 240-2.070.

Formal complaints can cost the Commission, agencies, and stakeholders significant time and money; they can last up to a year and involve expensive discovery and expert witnesses. Some of the below issues (such as the 1% RRI) represent inconsistent approaches between the utilities that must be resolved. We believe that direct action from the Commission is the best way to reach a resolution and clarify expectations for all stakeholders going forward. Actions the Commission may take include: requesting further briefing from parties on certain legal issues; scheduling formal hearings or presentations to the Commission; establishing workshops or workgroups to resolve the 1% RRI methodology, etc. (see below for specific actions requested.)

DEFICIENCIES IN AMEREN MISSOURI'S RES COMPLIANCE REPORT AND PLAN

I. 1% RRI Calculation Fails to Meet the Requirements of 4 CSR 240-20.100(5).

In Ameren's 2016-2018 RES Compliance Plan at pg. 15, the Company describes what it purports to be its compliance with Section (5) of the Commission's rule regarding the 1% Retail Rate Impact ("RRI"). Pg. 15 is identical to what Ameren submitted last year for its 1% RRI, even referring to a "2014 IRP RES Compliance Filing Model."[1] Despite new changes in Section (5) of the rule, Ameren has made little to no attempt to update this year's calculation. As in previous years, Ameren's 1% RRI calculation does not meet clear requirements of the Commission's rule at 4 CSR 240-20.100(5).

A. *The Requirements of 4 CSR 240-20.100(5)*

At a minimum, Section (5) requires a comparison of two portfolios: one entirely non-renewable portfolio, and one portfolio that meets the requirements of the RES. Section (5)(B) clarifies that the difference in the revenue requirements between these two portfolios is how the

[1] Reference to the "2014 IRP RES Compliance Filing Model" may simply be a mistake, as no such model was included as a workpaper in this case. In either case, the table on pg. 16 is not included in any workpaper.

RES retail rate impact is determined.[2] Section (5)(B) also goes on to clarify specifically how each future portfolio is to be determined. The non-renewable ("non-RE") portfolio is to be calculated by "adding, to the utility's existing generation and purchased power resource portfolio excluding all renewable resources, additional non-renewable resources sufficient to meet the utility's needs on a least-cost basis for the next ten (10) years."[3] The Commission added the phrase "excluding all renewable resources" in a 2015 rulemaking to reemphasize that the non-RE portfolio should exclude all costs of the utility's renewable generation and add in what it would cost to meet future demand using all non-renewable (i.e. fossil fuel) resources. This last addition of imaginary fossil fuel resources is crucial, as that is what enables the comparison between renewable and non-renewable investments.

B. *Ameren's Attempted RRI Calculation, and Non-Compliance*

As in years past, it appears Ameren Missouri has made no attempt to calculate the non-RE portfolio. On pg. 16 of its Plan, Ameren offers a table that is intended to calculate the 1% RRI. The top of the table includes a line labeled "No Renewables Revenue Requirement ($ Millions)."[4] The middle of the table lists the Company's "Unconstrained Full RES REC Requirement met with new builds," which is presumably offered to show Ameren's renewable investments in the absence of a 1% RRI limit. The bottom of the table ("RES Requirement within 1% Rate Cap Limit") includes Ameren's renewable investments within the 1% RRI, which is established by taking 1% of the top section of the table.

[2] 4 CSR 240-20.100(5)(B): "the RES retail rate impact shall be determined by subtracting the total retail revenue requirement incorporating an incremental non-renewable generation and purchased power portfolio from the total retail revenue requirement including an incremental RES-compliant generation and purchased power portfolio.
[3] 4 CSR 240-20.100(5)(B)(1).
[4] It appears that Ameren has repeated its 1% RRI calculation from last year, changing the name of the top section from "*MO* Renewables Revenue Requirement" to "*No* Renewables Revenue Requirement." (italics added) See *Ameren Missouri Renewable Energy Standard Compliance Plan*, 2015-2017, at pg. 17, submitted in File No. EO-2015-0267. That table calculates the RRI limit as a simple 1% of the utility's overall revenue requirement. It appears Ameren has repeated that simple calculation in this case.

Ameren Missouri's RRI calculation fails to meet the requirements of Section (5) because it does not include a non-RE portfolio. The table on pg. 16 does not explain how the renewable costs were subtracted and what additional fossil fuel costs were added to make up for that generation, as required by rule.[5] In fact, it appears that the "No Renewables Revenue Requirement" is simply Ameren's 10-year projected annual revenue requirement if it made no further renewable investments. Regardless of the format Ameren chooses to use for its RRI, it must include (at a minimum) those things required by rule, including: the non-RE portfolio; the assumptions behind it; and a comparison of the non-RE portfolio to the RES-compliant portfolio. Because none of these things are found in Ameren Missouri's calculation of its 1% RRI, the Company's 2016-2018 RES Compliance Plan is deficient.

Without a non-RE portfolio, the RRI calculation will not reflect a true comparison of generation costs, as required by the RES statute at Section 393.1030.2(1), RSMo.[6] The 1% RRI limit is supposed to compare the cost of renewable investments to the cost of new fossil fuel investments. The consequence of Ameren using a simple "1% of revenue requirement" RRI calculation is that renewable investments are compared to nothing. This results in an artificially low RRI limit and delays the renewable investments that the voters of Missouri demanded Missouri utilities make. We request that the Commission use its authority under 4 CSR 240-20.100(8)(B)1.F to order Ameren Missouri to correct its 1% RRI calculation to be in accordance with Section (5) of the Commission's rule.

C. *Request that Commission Establish Workshop to Correct 1% RRI Calculations.*

[5] For an example of how to include the assumptions behind the non-RE portfolio, see Empire District Electric Company's *2016-2018 RES Compliance Plan* at Attachment 5.

[6] § 393.1030.2, RSMo.: "Such rules shall include: (1) A maximum average retail rate increase of one percent determined by estimating and *comparing the electric utility's cost of compliance with least-cost renewable generation and the cost of continuing to generate or purchase electricity from entirely nonrenewable sources*…"

The moment is ripe for the Commission to take action and correct deficiencies in how utilities calculate the 1% RRI. Utilities have taken conflicting approaches to the RRI this year: While Ameren and KCP&L have limited themselves to 1% of their current revenue requirement, Empire has attempted to perform the comparison spelled out in Section (5) of the Commission's rule. Given these differing approaches, the Commission should step in to clarify what exactly is required by its rule at 4 CSR 240-20.100(5)(B). In addition, this is the first year following the recent revision of the Commission's rule implementing the RES. The Commission altered and added to the provisions of Section (5)(B), including adding the phrase "excluding all renewable resources," as mentioned above. Accordingly, this presents an opportunity to clarify the meaning of the Commission's rule regarding the 1% RRI calculation. Without clarification from the Commission, parties will continue to dispute the calculation and utilities will continue to have non-compliant and non-uniform approaches to the rule, which will disrupt future RES compliance.

Renew Missouri respectfully suggests that the Commission direct utilities, agencies, and interested stakeholders to participate in a workshop for the express purpose of developing an agreed-upon methodology and format for calculating the 1% RRI. We believe conducting this workshop will save utilities and stakeholders significant time and money by avoiding costly complaint processes and by standardizing procedures for future compliance years.

II. Use of Hydropower Larger than 10 MW Results in Virtually Zero Renewable Growth and Violates the Clear Requirements of the RES

Renew Missouri requests that the Commission use its authority to disallow Ameren Missouri's claimed compliance using RECs from a hydroelectric facility larger than 10 MW, which is expressly prohibited by law. The RES statute includes as a renewable energy resource

"hydropower . . . that has a nameplate rating of 10 megawatts or less." RSMo. § 393.1025(5), RSMo. Despite this clear restriction, Ameren continue to retire RECs from a large hydroelectric facility, calling upon a bizarre interpretation of law that defies common sense as well as common usage of terms in the industry. In this comment, we request that the Commission use its authority to find Ameren in non-compliance and work with the Division of Energy to resolve this issue for future compliance years.

The Keokuk Hydro-electric Generation Station ("Keokuk") has a nameplate rating of roughly 127 MW (far above the RES statute's 10 MW limit), and is composed of 15 generators with individual ratings between 7.2 MWs to 8.8 MWs. Ameren has repeatedly taken the interpretation that each of the facility's 15 generators qualifies as a separate hydroelectric resource. At pg. 9 of its 2015 RES Compliance Report ("Report"), Ameren Missouri states that it retired 1,313,261 RECs from Keokuk. This represents roughly 73% of the Company's compliance burden for calendar year 2015. In previous compliance years, Ameren Missouri has relied primarily on banked Keokuk RECs to satisfy the bulk of its non-solar compliance burden. Furthermore, in its Plan, Ameren makes clear that Keokuk will continue to supply the majority of the Company's needed RECs until 2018. Ameren books its Keokuk RECs at zero cost and zero value. This is because such hydro RECs are virtually without value anywhere else in the country; they are almost never used for RPS compliance. The result is that Ameren avoids the majority of its RES compliance burden by investing zero money into new renewable generation and by relying on a century-old asset that is expressly disallowed from compliance with Missouri's Renewable Energy Standard. Accordingly, the issue of whether Keokuk qualifies for compliance is one that has significant impact on the future of renewables in our State.

Parties have argued over the meaning of the phrase "nameplate rating" since compliance began in 2011, most notably in File No. EC-2013-0377. However, neither the Commission nor the Courts have ruled on the issue. "Nameplate rating" is commonly used in the industry to refer to a hydro-electric facility's *total* or *aggregate* rating even when neither of those adjectives is used. Ameren itself acknowledges the phrase "nameplate rating" as referring to the total capacity of the Keokuk facility in its submissions to the Federal Energy Regulatory Commission:[7]

HYDROELECTRIC GENERATING PLANT STATISTICS (Large Plants) Large plants are hydro plants of 10,000 Kw or more of installed capacity (name plate ratings)	
Column C Plant Name: Total installed cap (Gen name plate Rating in MW)	Keokuk 127.20

According to the usage of the phrase "generator name plate rating" by FERC and Ameren itself, retirement of RECs from the Keokuk facility is in direct contravention of the RES statute.

Furthermore, a common sense look at the issue brings things into focus. Ameren's interpretation asks the Commission to believe that the drafters of the RES intended Missouri's largest utility to mostly avoid new renewable investments for the first decade of compliance. Ameren also asks the Commission to ignore its own rulemaking history. Read properly, the Commission's rule at 4 CSR 240-20.100(1)(N) correctly applies the 10 MW cap to the entire hydroelectric facility. No party, including the Commission, ever considered the "individual generator" interpretation until well after the Commission had promulgated its rule. Stakeholders did not encounter the "individual generator" interpretation until after the rule's publication, when Ameren first hinted at plans to comply using Keokuk RECs in a later workshop docket.[8] Only

[7] FERC Form 1, Electric Utility Annual Report for the year 2012, filed by Union 12 Electric Company.
[8] See File No. EW-2011-0031. This was a workshop case called together by then-Commissioner Robert Kenney to discuss lingering issues from the formal rulemaking case, which concluded in June 2010. The Commission did not

when Ameren submitted its first compliance plan in April 2011 did parties finally have the ability to address the issue before the Commission.[9]

The allowance of RECs from the Keokuk facility substantially frustrates the intent of the RES statute, and Renew Missouri that the Commission use its authority to rectify this deficiency. Renew Missouri requests that the Commission find Ameren Missouri out of compliance in the amount of 1,313,261 MWh, assess the corresponding penalties authorized by Section (8) of the Commission's rule, and order Ameren Missouri to amend its Plan to not include compliance using hydro RECs prohibited by law.

A potential impediment to avoiding similar deficiencies in the future is the Missouri Division of Energy's certification of Keokuk as a renewable resource. Parallel with this comment, Renew Missouri is requesting that the Division of Energy change its rule at 4 CSR 340-8.010 and decertify all hydroelectric facilities larger than 10 MW. We respectfully request that the Commission work with the Division of Energy to correct the certification and ensure that such non-compliant resources not be used for RES compliance in the future.

CONCLUSION

Renew Missouri submits these comments in a good faith attempt to correct deficiencies in Ameren Missouri's RES compliance and to address long-standing, continuing issues with RES implementation. 2016 represents a particularly opportune moment for addressing these issues: the next RES stairstep increase is not until 2018, giving utilities plenty of time to respond to the Commission's clarifications and correct deficiencies. Furthermore, utilities are taking conflicting approaches to the 1% RRI calculation. Without resolution regarding how to calculate the 1% and whether large hydroelectric resources can be used for compliance, Missouri utilities will

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solicit feedback on the hydro issue in the workshop, and Ameren did not list hydropower as a projected compliance resource until its Dec. 14, 2010 filing.

[9] See File No. EO-2011-0275.

continue to make minimal investments in renewable energy and continue to be in violation of the RES statute and the Commission's rule.

WHEREFORE, Renew Missouri submits these Comments pursuant to 4 CSR 240-20.100(8)(B)1.E and requests that the Commission use its existing authority under the RES and its new authority under 4 CSR 240-20.100(8) to resolve the issues expressed above.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed, faxed, or emailed to all counsel of record on this 27th day of May, 2016.

/s/ Andrew J. Linhares
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