BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Voluntary Green Program/Pure Power Program Tariff Filing.	))))	Case No. EO-2013-0307 Tariff No. JE-2013-0197

AMEREN MISSOURI'S RESPONSE
TO MOTION OF RENEW MISSOURI TO INTERVENE
AND MOTION TO STRIKE

COMES NOW Union Electric Company d/b/a Ameren Missouri and in response to the Motion of Renew Missouri to Intervene and for its Motion to Strike, states as follows:

1. On December 11, 2012, the Commission issued its *Order Canceling Procedural Conference, Directing Notice, Setting Intervention Deadline and Establishing a Procedural Schedule* (the "Order"). The Order was served on all parties to the Company's then-pending general rate proceeding, including on Renew Missouri.[1] The Order set a deadline for requests to intervene of January 2, 2013.

2. Renew Missouri filed its Motion seeking to intervene seven weeks after the deadline and more than two months after it was served with the Order.

3. Renew Missouri's Motion claims that there is "good cause" for its intervention because its staff "identified arguments and perspectives" in addition to those it says are contained in Staff witness Michael Ensrud's direct testimony, which was filed approximately three weeks ago on February 5, 2013. Renew Missouri's claim doesn't constitute "good cause" under any reasonable application of that phrase. This is particularly true given that Renew Missouri knew or should have known (and, in fact,

[1] Renew Missouri is a fictitious name for Earth Island Institute, Inc., a California not-for-profit company whose officers and directors are all residents of the state of California.

admitted in its Motion that it did know of the pendency of this case) when any intervention request was due, knew or should have known when the Company would file its direct testimony, and knew or should have known when the Staff would file its rebuttal testimony. Renew Missouri is not unfamiliar with the Commission's procedures, having intervened in several cases in the last few years, including in the Company's last rate case, and in the Company's Missouri Energy Efficiency Investment Act case, its last Integrated Resource Plan case and in all of Ameren Missouri's Renewable Energy Standard report and plan cases. That it took Renew Missouri's "staff" three weeks to come up with "arguments and perspectives" does not establish good cause to allow a late intervention in this case less than two weeks before the evidentiary hearing in this case is set to occur. As a result, Renew Missouri's intervention cannot properly be allowed under 4 CSR 240-2.075(10).

4. The bottom line is that Renew Missouri disregarded the Commission's intervention deadline, which in turn led it to in effect disregard the procedural schedule established in this case on December 11, 2012 (a schedule that was served on Renew Missouri), which in turn has led Renew Missouri to file improper "surrebuttal testimony" that is in fact almost entirely a rebuttal of the Company's Pure Power tariff filing and Company witness Bill Barbieri's direct testimony filed more than one month ago. The hearing on this case is scheduled for next week. To allow Renew Missouri to intervene and file testimony at this point in the process would not only be a violation of the Commission's rule and the Commission-approved procedural schedule, but it would place a burden upon Ameren Missouri by negatively impacting its ability to respond to the allegations raised in Renew Missouri's proposed testimony. Allowing such an

intervention also raises Due Process concerns, particularly given the clearly improper nature of renew Missouri's "surrebuttal" testimony, as discussed below.

5. Further, Renew Missouri's attempt to intervene nearly two months late and to file "surrebuttal" testimony on nearly the eve of the hearings violates the Commission's rules relating to pre-filed testimony, found at 4 CSR 240-2.130(7)(D), which specifically require surrebuttal testimony to "be limited to material which is responsive to matters raised in another party's rebuttal testimony." While a portion of Mr. Wilson's testimony purports to reflect a limited response to the only rebuttal testimony filed in this case (from Mr. Ensrud), the vast majority of Renew Missouri Executive Director Patrick Wilson's testimony is a rebuttal to the Pure Power Program itself. For example, the "opening statement" starting with "In my capacity" on page 3 through the rest of the answer onto page 4 has nothing to do with responding to Mr. Ensrud's rebuttal testimony.[2] While lip-service is paid to "responding to" Mr. Ensrud's testimony on part of page 4 and a small part of page 5, starting with the question "What is your primary concern with Pure Power …" on page 5 through the rest of the testimony, Mr. Wilson is clearly rebutting Mr. Barbieri's direct testimony.

6. Not only is Mr. Wilson's testimony completely improper rebuttal testimony to Mr. Barbieri filed under the guise that it is surrebuttal testimony to Mr. Ensrud, but it contains rank and inadmissible hearsay (purported statements from unidentified customers who will not stand cross-examination), and it asks the Commission to do things it has no power to do. As the Commission (and the Courts) have recognized for decades, the Commission is not clothed with the authority to direct

[2] The Company did not cite to specific line numbers in Mr. Wilson's testimony, because it lacks line numbers, also in violation of the Commission's rules. *See* 4 CSR 240-2.130(6)(G).

utility management as to what programs the utility should offer or how the utility should offer them.[3] The Commission can determine whether program costs were prudently incurred for rate-setting purposes, and the Commission can determine whether a tariff should be approved. But what Mr. Wilson asks the Commission to do is to direct the Company to offer a green power program with specific terms and conditions, and even wants the Commission to tell the Company how it must spend funds collected from customers. While the Company agrees that the Commission could choose not to approve the Company's Pure Power program tariff, the Commission cannot design its own program and order the Company to implement it, notwithstanding Mr. Wilson's desires to the contrary. Additionally, Mr. Wilson's testimony proposes a "solution" that may very well not be legal under Missouri law. While the Company has not spent a great deal of time reviewing Renew Missouri's proposal, at first glance it may violate § 393.135 RSMo (2000), which prohibits Ameren Missouri from collecting in rates any charge for costs of construction in progress before the facility under construction (and in the case of Mr. Wilson's proposal, not even yet designed) is in service.

7. For the foregoing reasons Renew Missouri's intervention request should be denied and Mr. Wilson's "surrebuttal" testimony should be stricken.

WHEREFORE, Ameren Missouri respectfully requests that this Commission deny Renew Missouri's request to intervene and that it enter its order striking Mr. Wilson's surrebuttal testimony.

[3] "[T]he Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business." *State ex rel Public Service Commission v. Bonacker*, 906 S.W. 2d 896, 899 (Mo. Ct. App. S.D. 1995), *quoting* State ex rel Kansas City Transit, Inc. v. Public Service Commission, 406 S.W.2d 5, 11 (Mo. 1966).

Respectfully submitted,

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d/b/a Ameren Missouri

/s/Wendy K. Tatro

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

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record and to counsel for Renew Missouri this 25th day of February, 2013.

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