BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Submission of its 2015 RES Compliance Report and its 2016 RES Compliance Plan	)))	File No. EO-2016-0279

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 the Empire District Electric Company's ("Empire") 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 EMPIRE'S RES COMPLIANCE REPORTS AND PLANS

It is important to recognize that Empire made important investments in renewable energy long before the passage of Proposition C. Because of these early wind investments, Empire has found itself well down the compliance path in these last few years. With its new investments in distributed solar, Empire is coming even closer to achieving full compliance. However, Empire still falls short in solar compliance, as many of the SRECs it retired were unassociated with energy sold in Missouri. In addition, Empire continues to rely on RECs from its Ozark Beach Hydroelectric Project, which is larger than the statute's limit of 10 MW. Renew Missouri wants to ensure that Empire continues to invest in new renewable capacity, rather than relying on preexisting resources. We also want to ensure that Empire complies with the law and the Commission's rule. The below comments and suggestions are intended to achieve that goal.

I. Empire's 1% RRI is a Good Faith Attempt to Comply with 4 CSR 240-20.100(5).

Empire deserves credit for being the first investor-owned utility to attempt to calculate its 1% Retail Rate Impact ("RRI") limit according to the language of Section (5) of the Commission's rule. Empire made a special effort to work with Staff on what assumptions to

include for purposes of the RRI. On pg. 8 of its Plan, Empire states: "[f]or each year of the 2016-2018 RES Compliance Plan period, the annual retail rate impact is limited to a maximum of 1% of the 10-year average *non-RES compliant revenue requirement*." Additional details were included as part of ATTACHMENT 5. This seems to be a good-faith attempt to make sense of the language of the Commission's rule. Despite the attempt, a number of assumptions seem to be lacking. Exactly how the "non-RES compliant" portfolio is calculated will determine whether Empire's 1% RRI calculation is in line with the rule.

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 RES retail rate impact is determined.[1] 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."[2] 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.

[1] 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.
[2] 4 CSR 240-20.100(5)(B)(1).

B. *Empire's Attempted RRI Calculation.*

In ATTACHMENT 5 accompanying Empire's Plan under the "PVRR" tab, Empire compares an "RES" portfolio with a "NO-RES" portfolio. In a note several lines below, the following phrases are found: "No-RES (baseline)," "Exclude Meridian Way & Elk River (36 MW Accredited Capacity)," "Exclude Ozark Beach (16 MW accredited capacity)," "Add back Solar to Load Forecast (excluded in IRP Load Forecast)."

Unlike Empire's RRI calculations in past years – and unlike Ameren Missouri and KCP&L's RRI calculations this year – Empire has attempted to give meaning to 4 CSR 240-20.100(5)(B)(1). The above notes found in ATTACHMENT 5 indicate that Empire's "NO-RES" portfolio excluded all renewable costs, although it is unclear what those costs are. However, it does not appear that Empire accomplished the next task, which is to add in additional non-renewable resources to make up for the excluded renewable resources. Empire may have done so, but the assumptions are not clear from its Plan or from ATTACHMENT 5. Without adding this fictional amount of fossil fuel cost to the 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.[3] The 1% RRI limit requires a comparison of the cost of new renewable investments to the cost of new fossil fuel investments.

While Empire should be applauded for attempting to comply with the Commission's rule at 4 CSR 240-20.100(5), there appear to be some key assumptions lacking.

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

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:

[3] § 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*…"

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 further 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 Empire'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, utilities continue to retire RECs from large hydroelectric

facilities, 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 and work with the Division of Energy to resolve this issue for future compliance years.

The Ozark Beach Hydroelectric Project ("Ozark Beach") has a nameplate rating of 16 MW, in excess of the RES statute's 10 MW limit. Following the Commission's rulemaking in 2010, Empire went along with Ameren in taking the interpretation that each of their hydro facility's generators qualifies as a separate hydroelectric resource. At pg. 7 of its 2015 RES Compliance Report ("Report"), Empire states that it retired 89,873 RECs from Ozark Beach, for which it claims a 1.25 multiplier for in-state resources (totaling 112,341). This represents roughly 55% of the Company's compliance burden for calendar year 2015. In previous compliance years, Empire has heavily relied on banked Ozark Beach RECs to satisfy the bulk of its non-solar compliance burden. It is clear from Empire's Plan that Ozark Beach will continue to supply a large portion of the Company's needed RECs in the future. The result is that Empire avoids a substantial part of its RES compliance burden by relying on a century-old asset that is expressly disallowed from compliance with Missouri's Renewable Energy Standard. Accordingly, the issue of whether Ozark Beach 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. Utilities – including Ameren and Empire – routinely report the "nameplate rating" as the aggregate capacity of the entire hydroelectric facility.[4]

Empire's interpretation asks the Commission to believe that the drafters of the RES intended for two of Missouri's affected utilities to substantially avoid new renewable investments by using century-old hydroelectric plants. Ameren also asks the Commission to ignore its own rulemaking history. No party, including the Commission, ever considered the "individual generator" interpretation until well after the Commission had promulgated its rule. 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. Stakeholders did not encounter the "individual generator" interpretation until after the Commission submitted its rule for publication, when utilities first hinted at plans to comply using RECs from large hydro facilities in a later workshop docket.[5] Only when utilities submitted their first compliance plan in April 2011 did parties finally have the ability to address the issue before the Commission.[6]

The allowance of RECs from the Ozark Beach facility substantially frustrates the intent of the RES statute, and Renew Missouri asks that the Commission use its authority to rectify this deficiency. We request that the Commission find Empire out of compliance in the amount of 112,341 MWh, assess the corresponding penalties authorized by Section (8) of the Commission's rule, and order Empire to amend its Plan to not include compliance using hydro RECs prohibited by law.

[4] See Ameren Missouri's FERC Form 1, Electric Utility Annual Report for the year 2012.
[5] 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 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.
[6] See File No. EO-2011-0276.

A potential impediment to avoiding similar deficiencies in the future is the Missouri Division of Energy's certification of Ozark Beach 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.

III. Retirement of Wholesale Unbundled SRECs Violates the RES Statute

In its Report at pg. 7, Empire state that it retired 3,048 SRECs. These SRECs were purchased wholesale from the Stanton Solar Farm in Florida, and they were purchased independently from the electricity associated with them. From pg. 6 of its Plan, Empire makes it clear that it intends to satisfy the bulk of its solar obligation from these 3rd party wholesale SRECs in the near future. Such practice is in direct violation of the RES statute.

Like the hydro issue above, this so-called "Unbundled RECs" issue has plagued utilities' compliance with the RES since the law's passage. The issue is connected with an action of the Joint Committee on Administrative Rules ("JCAR") in 2010, which is currently being litigated before the Missouri Supreme Court. But regardless of the JCAR decision, neither the RES statute nor the Commission's rule allow compliance using RECs or SRECs that are unassociated with power sold to Missouri customers.

The RES at Section 393.1030.1, RSMo. states:

> The commission shall, in consultation with the department, prescribe by rule a portfolio requirement for all electric utilities to *generate or purchase electricity generated* from renewable energy resources. Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales: …

Based on the language above, the Commission is limited in prescribing its rule. Utilities only have two options; they may: 1) generate renewable energy themselves, or 2) purchase electricity generated from renewable energy resources. In either case, the portfolio requirements may only apply to electricity.

Section 393.1030.1 also states: "[t]he portfolio requirements shall apply to all *power sold to Missouri consumers* whether such power is self-generated or purchased from another source in or outside of this state." Again, the statute is clearly concerned with *power*, not merely paper. In fact, the statute anticipates the out-of-state issue by clarifying that utilities must still demonstrate delivery of power even if purchasing from outside the state. The fact that utilities "may comply in whole or in part by purchasing RECs" does not negate the fact that compliance can only be based on power sold to Missouri consumers. RECs are merely an accounting mechanism that assists in tracking and selling renewable power.

JCAR's action in 2010 disallowed sections of the Commission's rule that explicitly detailed how utilities would demonstrate delivery of power. However, JCAR's action only caused the Commission's rule to be silent on the issue of unbundled RECs. Nowhere does the rule at 4 CSR 240-20.100 allow for a utility to comply using RECs unassociated with power sold to Missouri consumers. Given that silence, the clear language of the statute must prevail.

Empire remains the only utility that plans to continue purchasing and complying with these useless RECs that do not change Missouri's electric portfolio in any way. Both Ameren Missouri and KCP&L have moved on and now meet their solar obligations using customer-generated and utility-owned SRECs.

For the reasons stated above, Renew Missouri asks that the Commission find Empire out-of-compliance in the amount of 3,048 MWh, and order Empire to amend its 2016-2018 RES Compliance Plan to not include the purchase of any wholesale 3rd party SRECs.

CONCLUSION

Renew Missouri submits these comments in a good faith attempt to correct deficiencies in Empire'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% or whether large hydroelectric resources can be used for compliance, Missouri utilities will continue to make minimal investments in renewable energy and continue to be in violation of the RES statute and the Commission's rule. Finally, Renew Missouri asks that the Commission use its authority to order Empire to correct its deficiencies related to unbundled SRECs.

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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