BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Ameren Missouri	)	EO-2012-0351
Submission of its	)	
2012 RES Compliance Report and	)	
2012-2014 Compliance Plan	)	

Comments on Ameren Missouri's 2012 RES Compliance Report

and 2012-2014 Compliance Plan

NOW COMES Wind on the Wires and The Wind Coalition, having reviewed the annual compliance filing made by Ameren Missouri, pursuant to Section 393.1030 RSMO and 4 CSR 240-20.100 and files the following comments.

1. The facts within Ameren Missouri's Renewable Energy Standard Compliance Report for 2011 (hereafter "Compliance Report", "filing" or "annual report") and Renewable Energy Standard Compliance Plan 2012-2014 (hereafter "Plan") indicates that the utility failed to comply with the requirements of the Missouri Renewable Energy Standard in that:

- The utility attempts to use ineligible "credits" from energy generated prior to the first year of the statutory Renewable Energy Standard ("RES") requirement.
- The utility attempts to use ineligible "credits" for compliance with the Missouri RES solar requirements by using "credits" that represent energy not affiliated with energy constituting a portion of the energy sales by a Missouri utility to its customers and which is not energy generated from a renewable resource that is part of a portfolio of a Missouri utility through ownership or contract.
- The utility attempts to use "credits" from energy generated from a hydroelectric-facility that does not qualify, under the statute, as a Renewable Energy Resource.

2. As a result of the deficiencies noted, the Commission should either order the utility to refile its Compliance Report if the utility can show the retirement of additional

qualified Missouri RECs sufficient to meet the requirements or order that a hearing be held to determine the utility's compliance with the Missouri Renewable Energy Standard. In addition, the Commission should order the utility to amend its RES Compliance Plan for 2012-2014 so that it uses credits that were affiliated with power sold to Missouri consumers and represents energy generated after January 1, 2011. If a deficiency is found that cannot be remedied, the Commission should take appropriate action and instruct its staff to file a complaint to pursue penalties.

INTRODUCTION OF THE FILING PARTIES

Wind on the Wires, launched in 2001, is a collaborative organization. Our Board of Directors and members are comprised of wind developers, environmental organizations, wind energy experts, tribal representatives, clean energy advocates, and businesses providing goods and services to the wind industry. Our mission is to overcome the barriers to bringing wind energy to market. We focus on technical issues, regulatory issues and education and outreach in the Midwest ISO footprint, with specific focus on Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota and Wisconsin.

The Wind Coalition is a non-profit association formed to encourage the development of the vast wind energy resources of the south central United States. The Wind Coalition is active in two particular regions: the Southwest Power Pool ("SPP") and the Electric Reliability Council of Texas ("ERCOT") grid systems, which cover all or part of 8 states (Texas, Oklahoma, Kansas, Nebraska, Missouri, Arkansas, New Mexico, and Louisiana). The Wind Coalition's members include developers, owners and operators of wind farms, turbine and component part manufacturers, law and engineering firms and public interest advocates.

DISCUSSION

The first annual report filed by the utility attempts to retire "credits" that do not qualify under Missouri law. This annual report is for 2011, the first year of the Missouri Renewable Energy Standard. Because this is the initial report the Commission will be providing important

guidance on the proper interpretation of the Missouri RES law. The issues raised herein are: (1) can energy generated prior to 2011, the first year that the utility was required to generate or purchase Missouri RECs, be used to meet the RES requirements; (2) can energy generated that does not represent energy constituting a portion of a Missouri electric utility's sales qualify as Missouri RECs; and (3) can energy generated from a hydroelectric- facility that has a nameplate rating of greater than ten MWs qualify as Missouri RECs.

1. Ameren Attempts to use Ineligible "Credits" from Energy Generated Prior to the First Year of the Statutory RES Requirement

Like all Missouri statutes, the Missouri RES must be understood within the context of the whole statute, creating an interpretation that is consistent within the act, other statutes and the constitution. In this case, the utility attempts to take out of context one provision of the RES and apply it so as to undermine the requirements of other provisions. Section 393.1030.2 states in part: "An unused credit may exist for up to three years from the date of its creation." The utility evidently interprets this section to mean that credits could have been **created** and "banked" prior to the first year that the utility was required to generate electricity from renewable resources. The requirement for Missouri utilities to produce or purchase qualified Missouri RECs did not begin until January 1, 2011. Section 393.1030.1 states in pertinent part:

> Such portfolio requirement shall provide that electricity from renewable energy resources shall constitute the following portions of each electric utility's sales:
> (1) No less than two percent for calendar years 2011 through 2013;
> (2) No less than five percent for calendar years 2014 through 2017;
> (3) No less than ten percent for calendar years 2018 through 2020; and
> (4) No less than fifteen percent in each calendar year beginning in 2021.

Thus, 2011 is the first year that energy generated would have created Missouri-qualified RECs. In its Compliance Report for 2011, the utility takes three years of free, non-compliant "credits" to offset its first year obligation. In its Compliance Plan, Ameren states its intent to use credits representing energy generated prior to 2011 to count towards the obligations in 2012 and 2013. Such an interpretation, in essence, renders meaningless the requirement that in 2011 the utility show 2% of its sales coming from renewable energy resources. Under Ameren Missouri's

interpretation, the utility does not need any sales from 2011 to represent renewable energy; instead, it may simply show sales from three years prior to the requirement. Such an interpretation is contrary to the requirement that the utility provide a minimum percentage of its energy as renewable energy beginning in 2011. In order to qualify as a percentage of the Missouri RES requirement it must constitute a portion of the sales in 2011 or later. Prior to 2011 there is no requirement from which to generate excess Missouri RECs.

The utility is attempting to use the banking provision for a function it was not intended. The banking provision is designed to allow a utility to roll over excess RECs generated after 2010 from one year to the next. Missouri has an energy standard rather than a capacity standard. Energy production from particular types of generation are not always predictable, therefore, allowing the utility to bank Missouri RECs and draw on them up to three years after their generation date can help smooth out the variations in production. Allowing energy produced prior to the first year of the requirement, as Ameren is attempting to do, is simply a circumvention of the requirement. The Commission should not allow this interpretation of the RES.

2. Ameren Attempts to use Ineligible "Credits" for Compliance with the Missouri RES Solar Requirement

The utility attempts to undermine the RES by trying to use credits that were not generated by any Missouri utility as a part of its sales to Missouri customers. The Commission is well aware of the substantial controversy surrounding whether credits for energy that has no connection with the power used by Missouri utilities to serve their customers may be used to satisfy the Missouri RES. The differences in the interpretations are the difference between an RES which results in a more diverse energy portfolio for Missouri utilities and one which is simply a requirement for the utilities to pay for certificates representing renewable energy generated anywhere without any connection to Missouri consumers. For purposes of this discussion it will be assumed that there is no rule in existence addressing this matter. To interpret the Missouri RES all of the provisions must be read together in a meaningful way.

There is significant language in the Missouri RES requiring utilities to move toward having and using more renewable generation. Section 393.1030.1 RSMO requires that the utility have a portfolio requirement prescribed by the Commission. Section 393.1030.1 begins:

> "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."

The statute follows with the requirements of sales percentages for years beginning in 2011. It then continues:

> "The 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. A utility may comply with the standard in whole or in part by purchasing RECs. Each kilowatt-hour of eligible energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of compliance."

The portfolio requirement applies to all power sold to Missouri consumers. It is a requirement that is clearly intended to increase the percentage of renewable generation that a utility has in its energy generation portfolio. Any other provision must be interpreted in light of this clear meaning.

Several entities argue that the second sentence of the above quote, coupled with the definition of Renewable Energy Credits should be read as an exception to this requirement. But that interpretation would render meaningless the requirement of the utility to have renewable generation in its portfolio producing required levels of energy, which is the very focus of the portfolio requirement. These provisions can be read in a way that gives all of the provisions meaning. Therefore, RECs are tied to the renewable energy that was used for Missouri consumers. A utility that has used renewable energy in excess of the portfolio requirement will have excess RECs. Those excess RECs could be sold in the open market or to another Missouri utility.

RECs are the standard accounting mechanism to show compliance and the structure of the statutory language supports that interpretation. A REC is defined in every state with an RES requirement. Every state's REC is a credit in that state only if it complies with the laws of that

state's RPS or RES. Thus, it is not possible to know what a REC is in a state without knowing the state's RES law and what a renewable energy credit represents pursuant to it.

In Missouri, a Missouri REC represents the energy that is used to meet the renewable requirement. That meaning can readily be found through proper statutory interpretation. No RECs are created until the energy is generated within the portfolio described in Section 1030.1. This is the requirement which refers to percentages of a utility's sales coming from renewable energy. It must be "power produced" either from self-generation or through purchase from another source. Thus, the RES makes it clear that the utility must own the generation or enter into power purchase agreements in meeting its portfolio requirement and generate energy therefrom in sufficient amounts to comply.

The accounting for the compliance with the statute comes from RECs created from and representing this self-generation or purchase power. The RECs must meet the definition of section 393.1025 and have been created under 393.1030. Only these RECs are qualified Missouri RECs which may be used for compliance. The sentence at the heart of the discussion allowing a utility to purchase RECs then allows for unbundling of these qualified Missouri RECs. It provides a utility an opportunity to purchase such qualified Missouri RECs from others if the utility is unable to meet the portfolio requirements in a particular year through its own sources of generation. It also ensures that even if one utility in the state is not utilizing sufficient renewable energy the deficiency is being made up by another Missouri utility. It is this interpretation -- and this one alone -- that allows the entirety of the Missouri RES to have meaning.

Other language within the RES is also consistent with this interpretation. It gives a realistic value to the .25 adder for Missouri generation that would be absent if RECs were allowed to be unconnected to energy used for Missouri consumers. The Commission is aware that there are areas of the country which have high supplies of renewable generation and low prices on credits that represent the renewable energy generated from such generation. The multiplier would have virtually no impact on encouraging the construction of renewable generation in

Missouri if purchasing the credits from such a universe of credits were allowed under Missouri's RES.

Again, Missouri RECs are generated when "power [is] sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state." If power is generated in Kansas, Oklahoma, Iowa, or Illinois but sold to Missouri, this power qualifies for Missouri RECs. However, the development and purchase of electricity generated by a facility *within Missouri's borders* provides Missouri with the accompanying economic development benefits, thus rendering meaningful the 25% bonus for in-state RECs. Therefore, the value of these qualified Missouri RECs would be far greater than the meaning that the utility is attempting to give in its filing.

Allowing a utility to purchase RECs representing energy that was not affiliated with power sold to Missouri consumers would render the portfolio requirement in the previous sentences of the act meaningless. Such an exception would swallow the rule – and the annual reports of Ameren and Empire demonstrate that point. This is because a utility would need no portfolio of renewable energy used to serve Missouri customers-ever. All that would be necessary would be to purchase credits from renewable resources anywhere and the RES would be met. It would also render toothless the penalty provisions of the RES, which are based upon the value of Missouri RECs. The value of RECs generated to serve Missouri customers would be of significantly less supply and thus of substantially larger value. The incentive to comply, created by the penalty provision, would ensure that the utility increased its percentage of renewable energy rather than just continuing to by unrelated credits from California. In light of the clear portfolio requirements of Section 393.1030.1 RSMO this would not be proper statutory interpretation because the statute would not cause a change in the actual operation of the utilities.

Thus the Commission should not allow utilities to count solar RECs toward the RES requirement if the REC was not affiliated with power sold to Missouri consumers.

3. Ameren Attempts to use "Credits" from Energy Generated from a Hydroelectric-Facility that does not Qualify as a Renewable Energy Resource.

In its Compliance Report and Compliance Plan, Ameren uses the output from the Keokuk Hydro-electric Generation Station. Keokuk's total generating capacity exceeds the 10 megawatt limitation placed on the size of hydropower facilities in the statute. [1]

The use of nameplate capacity ratings are well known to the Commission. Nameplate ratings can refer to individual generators or facilities. Generally, the nameplate rating is provided in the context of the plant's use, such as the "nameplate rating of the generator" or the "nameplate rating of the plant." It is common for capacity ratings to be given for facilities as a whole. Wind farms, for example, have a nameplate rating according to the total of all of the generators at the farm. This is because it is the rating for the entirety of the facility which is important in determining its impact on the grid.

The determination of whether the nameplate rating qualification in the Missouri RES is per generator or is for the facility can be determined in part from Section 393.1025(5) which states in pertinent part:

> "…hydropower (not including pumped storage) that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less,…

In this provision of the statute, the term "hydropower" is modified with two restrictions: that it not require a new diversion or impoundment of water and a nameplate restriction. As discussed below the restrictions apply to the facility or plant not the size of the individual generators.

The meaning of "hydropower" is the same as "hydroelectric power" according to the online Merriam-Webster dictionary which defines this term as: "of or relating to production of electricity by waterpower." (The Merriam-Webster Online Dictionary, *defining* hydroelectric))

[1] It is acknowledged that the Department of Natural Resources definition in 10 CSR 140-8.010(2)8 allows for the use of 10 MWs or less per generator. However, that interpretation is inconsistent with the intent of the statute and should not be viewed as binding upon this Commission. .

The nameplate under this definition would refer to the power plant not individual generator ratings.

Another way to evaluate this provision is to look at the meaning of the statutory provision under its two potential interpretations – either an individual generator or the total hydroelectric facility. Substituting generator and plant in the statute with the two conflicting definitions suggested by the parties is enlightening.

> "… **a generator** (not including pumped storage) that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less,…"

in comparison to

> "…**a hydroelectric facility** (not including pumped storage) that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less,…"

The statutory provision does not make sense in the context of "a generator." A generator is not comparable to pumped storage, which is a type of facility not a type of generator. Pumped storage facilities, in fact, may have more than one generator. On the other hand, the substitution of the term "a hydroelectric facility" fits perfectly.

It is also helpful to examine the intent of this provision. It is clear that the language is intended to limit environmental impacts made by new hydropower and not reward those facilities that have caused significant impacts in the past. This component supports the meaning of "hydropower" as the hydroelectric plant. It is the size of the plant that primarily determines the environmental impact that the restriction of the statute is trying to mitigate. It is also the production benefits of the plant not the individual generators that justifies the expense of the building of the dam, condemnation of flooded ground and construction of the hydroelectric plant.

The statutory definition of qualified hydropower is clearly intended to be limited to small plants that do not require a new dam or other diversion mechanisms. The utility's attempt to use a hydro-plant that is substantially in excess of the 10 MW capacity limit should be rejected.

CONCLUSION

WHEREFORE, Wind on the Wires and The Wind Coalition, herein having filed the above comments to the utility's RES Compliance Report for 2011 and Renewable Energy Standard Compliance Plan 2012-2014, move that the Commission accept these comments; find that the utility has not complied with the requirements of the Missouri RES; order the utility to amend its RES Compliance Report for 2011 if it has additional Missouri eligible RECs for the year 2011, or if it does not and cannot by amendment achieve compliance, that the Commission instruct its staff to file a complaint to pursue penalties; order the utility to amend and refile its RES Compliance Plan for 2012-2014 so that it uses credits that were affiliated with power sold to Missouri consumers and represents energy generated after January 1, 2011, or if it does not and cannot by amendment achieve compliance, that the Commission instruct its staff to file a complaint to pursue penalties.

Respectfully submitted,

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