BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Rulemaking	)	
Regarding Electric Utility Renewable	)	File No. EW-2011-0031
Energy Standard Requirements.	)	

AMEREN MISSOURI'S RESPONSE TO AUGUST 5, 2010 ORDER

Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company) is appreciative of the opportunity to provide comments on the questions set forth within the Missouri Public Service Commission's (Commission) Order. Ameren Missouri has been an active participant in the stakeholder process and meetings that were previously held in attempting to provide for appropriate rules that would allow for smooth implementation of the provisions of the Missouri Renewable Energy Standard (RES), which is codified at Section 393.1020 through 393.1050, RSMo. (Cum. Supp. 2009). Ameren Missouri joins in the comments filed by the Missouri Energy Development Association (MEDA) and offers these additional comments, mainly on the legal aspects posed by the questions set forth in the August 5, 2010 Order.

Ameren Missouri's primary goal in the work and comments provided during the earlier workshops and rulemaking proceedings was to ensure that its rate payers would not be unduly burdened with the cost of complying with the state RES. Though many renewable energy developers and supporters of the RES would like for it to be a means of stimulating economic development in the state, the language of the law does not include economic benefits as a criteria and the Company does not believe the cost to provide that benefit should be shouldered strictly by the customers of the state's three investor owned utilities. The goal of our comments and suggestions provided in this response is the protection of our rate payers, by ensuring the final rules are supported by the language of the statute.

Question A - What are the legal, economic, and public policy consequences and implications of requiring electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located in Missouri?

Limiting electric energy or RECs to generation facilities within Missouri as the sole means of compliance with the RES would cause the cost of compliance to be unduly high and therefore limit the amount of renewables actually constructed. The very nature of using renewable resources to fuel electrical generation requires that the generation facility be built in an area where an ample supply of renewable fuel sources exists. Basic economics of supply and demand means that requiring RES compliance with all Missouri resources would mean a smaller and more expensive supply in meeting the utility demand resulting in higher costs being incurred by rate payers who would be required to pay for such development.

Importantly, because no such requirement exists under the statute, imposition of such a requirement exceeds the authority granted the Commission by the statute. The plain language of the statute clearly contemplates that compliance with the law may occur using non-Missouri resources. Section 393.1030.1, RSMo provides an incentive to electric utilities to favor Missouri generation by providing 25 percent additional credit towards compliance by stating the following:

> Each kilowatt hour of eligible energy generated in Missouri shall count as 1.25 kilowatt hours for purposes of compliance.

If all energy, and all RECs, were required by the statute to be sourced in Missouri, Section 393.1030.1 would be unnecessary and would have no effect. However, this would violate one of the most basic of principles of statutory construction, that is, that every word, phrase and provision of a statute be given effect. *See Neske v. City of St. Louis*, 218 S.W.3d 417, 424 (Mo. 2007) ("The primary rule of statutory construction is to determine the legislature's intent by considering the plain and ordinary meaning of the words used in the statute and by giving each word, clause, sentence, and section of the statute meaning"). Section 393.1030.1 can only be given effect if energy not generated in Missouri counts as 1 kilowatt hour and Missouri sourced energy counts as 1.25 kilowatt hours. Thus, the law provides for an incentive for electric utilities to use Missouri generation sources, but importantly it specifically does not mandate it and affirmatively contemplates that energy (and RECs) can come from non-Missouri sources.

Ameren Missouri believes the Commission's rationale for the geographic sourcing limitation in the RES rule is based on an incorrect reading of the RES. On page 8 of its Order, the Commission attempts to rationalize its restriction on geographic sourcing on the following language in Section 393.1030.1 RSMo:

> 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.

Because this language addresses the portfolio requirements (which are tied to a starting point – a baseline), the plain language of the statute demonstrates that the reference to Missouri customers relates only to establishing a demand baseline for how the Commission is to determine whether the stair-stepped portfolio objectives have been achieved. In other words, this language does nothing more than establish what number of megawatt-hours should be used when applying the percentages under the portfolio requirement in future years. The base amount of megawatt-hours is the amount of power that the utility sells to its Missouri customers. This means, of course, that the RES compliance percentages are not applied to off-system sales made to other utilities throughout the year. The statutory language in no way can be fairly read to limit the ability of the utility to obtain REC certificates from the lowest cost source. This too demonstrates that the geographic limitation imposed by the Commission is directly adverse to the letter and purpose of the RES, and is thus unlawful.

Question B - What are the legal, economic and public policy consequences and implications of allowing electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located outside of Missouri, only if the energy for compliance with the RES is sold to Missouri customers?

The comments concerning Question A are applicable to this question as well. However, this question introduces another element of legal concern because it requires that Missouri utilities comply only by purchasing electricity and does not allow for the purchase of RECs without energy.

Requiring renewable energy delivery to Missouri customers means that the only possible compliance option is a power purchase agreement or for the utility to build its own renewable energy resource. Procuring in this manner requires that the REC must remain bundled with the energy, which defeats the purpose and premise for the establishment of RECs. This requirement is unauthorized by law and is, in fact, contrary to the purpose and letter of the enabling legislation. The RES specifically contemplates that an electric utility "may comply" with its renewable energy portfolio requirements "in whole or in part by purchasing RECs." *See*, Section 393.1030.1, RSMo. The obvious purpose of including an option to buy RECs instead of energy was to "unbundle" the benefit of renewable energy production from the requirement that energy actually be delivered to a Missouri customer. In other words, the legislation allows electric utilities to comply with the renewable energy portfolio requirements by purchasing tradable certificates instead of arranging for the delivery of a specific resource's output into a particular service territory. A requirement for physical delivery of power to Missourians directly contradicts the language of the RES. This is unlawful. *See* § 536.014.2 RSMo ("No department, agency, commission or board rule shall be valid in the event that the rule is in conflict with state law."); *State ex rel. Springfield Warehouse & Transfer Co. v. Public Serv. Comm'n*, 225 S.W.2d 792, 794 (Mo. App. W.D. 1949) ("Respondent is merely the instrumentality of the Legislature, created for the purpose of carrying out that policy. It has no power to adopt a rule, or follow a practice, which results in nullifying the expressed will of the Legislature. It cannot, under the theory of 'construction' of a statute, proceed in a manner contrary to the plain terms of the statute.")

Question C - What are the legal, economic and public policy consequences and implications of allowing electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located outside of Missouri, only if the energy for compliance with the RES is sold to retail customers located with the Regional Transmission Organization or Independent Transmission System Operator in which Missouri is located?

The arguments set forth above can be applied to this scenario as well, as it sets forth a broader geographical area from which energy purchases can be made, but still restricts the area in a manner not set forth within the RES.

This scenario was offered as a compromise position by MEDA and the three investor owned utilities in previous stakeholder meetings. Expanding the compliance region to match the RTOs in which Missouri is located, means that a wider economical pool of resources would be available for the three investor owned utilities to tap into. There will still be a higher cost impact to Missouri customers (versus no geographical restriction), but it is less than the cost impact of scenarios which restrict these purchases to generators located within the state of Missouri.

Question D - What are the legal, economic and public policy consequences and implications of allowing electric energy or RECs associated with electric energy for compliance with the RES to come from a generation facility located anywhere outside of Missouri irrespective of the location of the delivery of the energy?

Legally, as has been previously explained, this interpretation is the one which most accurately reflects the requirements of the RES.

In addition, this scenario provides the widest range of compliance flexibility and offers the least cost compliance option for both the utilities and their customers. Development of renewable resources anywhere in the country would promote the efforts of reducing dependence on fossil fuels while limiting emissions across the country. In addressing overall public policy, costs associated with compliance must be factored into the equation. With the added advantage of a 1.25 multiplier for in state generation, renewable generation systems built within the borders of the state can incur development and generation costs of up to 125% of outside generators. Any generation resource developed within that cost range would undoubtedly be the one chosen by the utilities in the state to be utilized for compliance purposes.

Question E - Which of the above potential scenarios (as set forth in A, B, C or D above) are legally permissible and/or supportable under the current statue?

As has been detailed above, the only interpretation supported by the current statutory language is the one in Question D. The statue as written imposes no such restrictions as addressed by items 4.A-C above.

Question F - In answering the questions set forth in A-D, stakeholders should also discuss the operation of the 1% retail rate impact under each of the scenarios.

In general, the operation of the 1% rate cap is the same under all scenarios. As the cost of compliance under different scenarios increases, any cap would come into play faster. Section 393.1030 (2)(1) RSMo requires the Commission to develop rules that include "[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, taking into account future environmental regulatory risk including the risk of greenhouse gas regulation." The current RES rules require a 10-year comparison of the cost of adding renewables versus using an entirely non-renewable portfolio. This period of time is not included in the statute, it requires arbitrary and unsupportable assumptions about regulation far into the future, and as a consequence is unlawful, arbitrary, capricious, and constitutes an abuse of discretion.

Moreover, although it is not completely clear in the rules, they arguably permit a 10-year averaging of the annual cost impact in adding renewables. In other words, arguably the renewables could cause a 10% increase in year one, if there were no additional cost increases over the next nine years. Such an interpretation is clearly inconsistent with the statutory requirement. The rules should be modified so that rates including the renewables can never, at any point in time be more than 1% higher than they would be without renewables. Of course, if the 1% cap means the utility cannot pass along those costs at the time they are incurred, then this will impose additional regulatory lag as the utility will be forced to carry the remaining costs until enough years have passed to flow the cost through to customers.

Ameren Missouri appreciates the Commission's consideration of these comments and looks forward to participation in any workshops scheduled in this matter. It is in the interest of all parties, and of Missouri utility customers, for there to be clarity around the compliance options for Missouri's RES law.

Respectfully submitted,

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d/b/a Ameren Missouri

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CERTICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to the following on this 1st day of October 2010:

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