

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

EARTH ISLAND INSTITUTE d/b/a	)	
RENEW MISSOURI, et al.,	)	
	)	
Complainants,	)	
	)	
vs.	)	Case No: EC-2013-0377
	)	
UNION ELECTRIC COMPANY d/b/a	)	
AMEREN MISSOURI,	)	
	)	
Respondent.	)	

**ANSWER**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Answer to the Complaint filed in this proceeding, states as follows:

1. Respondent filed with the Commission its Renewable Energy Standard ("RES") Compliance Report for 2011 on April 16, 2012 in Case No. EO-2012-0351. The Commission's Staff filed a report on May 31, 2012 indicating that it found no deficiencies in Respondent's April 16, 2012 filings. The Commission, by Notice issued August 15, 2012, determined that no further order from the Commission was appropriate.

2. The Complaint that is the subject of this proceeding alleges that Ameren Missouri has failed to comply with the Missouri RES because it has utilized renewable energy credits (RECs) (a) from its Keokuk hydroelectric facility, (b) from energy generated prior to the time RES compliance began, and (c) from power not actually sold to Missouri customers. Ameren Missouri believes this Complaint is generally without merit and should be denied.

3. Ameren Missouri's answers to the specific allegations raised in the Complaint are provided below. Any allegation not specifically admitted herein by the Company should be considered denied.

#### **ANSWERS TO SPECIFIC ALLEGATIONS**

4. References hereafter to numbered paragraphs refer to the numbered paragraphs of the Complaint filed in EC-2013-0377.

5. Respondent is without sufficient knowledge of the allegations stated in Paragraph 1 and therefore denies same.

6. Respondent is without sufficient knowledge of the allegations stated in Paragraph 2 and therefore denies same.

7. Respondent is without sufficient knowledge of the allegations stated in Paragraph 3 and therefore denies same.

8. Respondent is without sufficient knowledge of the allegations stated in Paragraph 4 and therefore denies same.

9. Respondent is without sufficient knowledge of the allegations stated in Paragraph 5 and therefore denies same.

10. Respondent admits the allegations stated in Paragraph 6.

11. Respondent denies the allegations stated in Paragraph 7.

12. In response to Paragraph 8, Respondent admits that the Commission has the jurisdiction to hear a complaint alleging the violation of a statute, regulation or order of the Commission by a public utility, but Respondent denies the remaining allegations of Paragraph 8.

13. Respondent denies the allegations stated in Paragraph 9.

14. Respondent denies the allegations stated in Paragraph 10.

15. Respondent denies the allegations in Paragraph 11.
16. Respondent neither admits nor denies the allegations contained in Paragraph 12, as Missouri statutes speak for themselves.
17. In response to Paragraph 13, Respondent admits the Commission initiated a rulemaking on the date alleged and transmitted an order of rulemaking to the Secretary of State, but denies the remaining allegations contained in Paragraph 13.
18. In response to Paragraph 14, Respondent admits the first sentence and denies the second sentence of the allegations stated in Paragraph 14.
19. Respondent neither admits nor denies the allegations contained in Paragraph 15, as Commission rules speak for themselves.
20. Respondent neither admits nor denies the allegations contained in Paragraph 16, as Commission rules speak for themselves.
21. Respondent admits the allegations contained in Paragraph 17.
22. Respondent admits the allegations stated in Paragraph 18.
23. Respondent admits the allegation stated in Paragraph 19 that it submitted its 2011 RES Compliance Report and 2012 Compliance Plan in Case No. EO-2013-0351 and admits that 2011 was the first year Ameren Missouri was required to comply with the portfolio requirements of the RES. Respondent denies the remaining allegations stated in Paragraph 19.
24. Respondent denies the allegation stated in Paragraph 20 that it attempted to retire Keokuk generated RECs but admits that it did retire RECs from various generation sources. Respondent admits the remaining allegations stated in paragraph 20.
25. Respondent admits the allegations stated in Paragraph 21.
26. Respondent admits the allegations stated in Paragraph 22.

27. Respondent admits the allegations stated in Paragraph 23.

**COUNT I: HYDROPOWER**

28. Respondent incorporates its answers to paragraphs 1-27 of the Complaint in response to Paragraph 24.

29. Respondent denies the allegations stated in Paragraph 25.

30. In response to Paragraph 26, Respondent admits that each of the generators at its Keokuk hydropower facility have a nameplate rating of less than 10 MW. Respondent denies the remaining allegations stated in Paragraph 26.

31. In response to Paragraph 27, Respondent admits that the statute referenced does not use the word “generator” in Section 393.1025(5). Respondent denies the remaining allegations stated in Paragraph 27.

32. Respondent denies the allegations stated in Paragraph 28.

33. Respondent denies the allegations stated in Paragraph 29.

34. Respondent denies the allegations stated in Paragraph 30.

**COUNT II: PRE-COMPLIANCE ERA RECs**

35. Respondent incorporates its answers to paragraphs 1-27 of the Complaint in response to Paragraph 31.

36. Respondent denies the allegations stated in Paragraph 32.

37. In response to Paragraph 33, Respondent neither admits nor denies the quotation from the regulations in Paragraph 33 as the regulations speak for themselves. Respondent admits the remaining allegations stated in Paragraph 33.

38. Respondent denies the allegations stated in Paragraph 34.

39. Respondent denies the allegations stated in Paragraph 35.

40. Respondent neither admits nor denies the quotation from regulations set forth in Paragraph 36. Respondent denies the remaining allegations stated in Paragraph 36.

41. Respondent denies the allegations stated in Paragraph 37.

42. Respondent admits the first sentence of Paragraph 38. Respondent denies the second sentence of Paragraph 38.

### **COUNT III: UNBUNDLED RECS**

43. Respondent incorporates its answers to Paragraphs 1-27 of the Complaint in response to Paragraph 39.

44. Respondent denies the allegations stated in Paragraph 40.

45. Respondent neither admits nor denies the allegations stated in Paragraph 41 as the statute speaks for itself.

46. Respondent denies the allegations stated in Paragraph 42.

47. Respondent denies the allegations stated in Paragraph 43.

48. Respondent denies the allegations stated in Paragraph 44.

49. Respondent denies the allegations stated in Paragraph 45.

### **OTHER DEFENSES**

50. Respondent alleges that the Commission lacks jurisdiction to decide one or more of the issues raised by the Complaint because, without limitation, the Commission has no statutory authority (i) to void any legislative enactment, as alleged in Count III of the Complaint, (ii) to consider challenges to its final order of rulemaking in Case No. EX-2010-0169 after the date for filing applications for rehearing in that case has passed, and (iii) to void or refuse to enforce rules adopted by the Missouri Department of Natural Resources, under authority of Section

393.1030.4, RSMo, that establish a certification process for electricity generated by hydropower and other renewable resources.

51. Respondent alleges that the Commission lacks jurisdiction to decide the lawfulness of the rule adopted by the Missouri Department of Natural Resources defining “hydropower,” 10 CSR 140-8.010(2)8, because, without limitation, (i) Complainants have not demonstrated that they, individually or collectively, have standing under Section 536.053, RSMo, to challenge that rule, and (ii) Section 536.050.1, RSMo, vests the judicial branch with exclusive jurisdiction to determine the validity of that rule.

52. Respondent alleges that Count I of the Complaint constitutes an unlawful collateral attack on the Commission’s final order of rulemaking in Case No. EX-2010-0169, because Count I challenges the definition of “hydropower” in 4 CSR 240-20.100(1)(K)8, which was included in rules adopted by the Commission in its final order of rulemaking in Case No. EX-2010-0169. Although some or all of the Complainants participated in Case No. EX-2010-0169, none of the Complainants filed for reconsideration of the Commission’s final order of rulemaking in that case. Thus, Complainants are barred by Section 386.550, RSMo, from seeking judicial review of any of the rules adopted in the final order or from collaterally attacking that order in this complaint proceeding.

53. Respondent alleges that some or all of Complainants’ claims are or may be barred by the doctrines of res judicata and collateral estoppel, because in *State ex rel. Missouri Energy Dev. Assn. v. Pub. Serv. Comm’n.*, 386 S.W.3d 165 (2012), the Missouri Court of Appeals determined that the rules adopted by the Commission in Case No. EX-2010-0169 are lawful and reasonable.

54. Complainants fail to state a claim upon which relief can be granted.

**WHEREFORE**, Ameren Missouri respectfully requests that the Commission issue an order denying Complainants' requests for relief as stated in the Complaint and dismiss the Complaint with prejudice.

Respectfully Submitted,

/s/ Wendy K. Tatro

**Wendy K. Tatro**, #60261

Corporate Counsel

**Thomas M. Byrne**, #33340

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

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 4<sup>th</sup> day of March, 2013.

/s/ Wendy K. Tatro  
Wendy K. Tatro