BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

AMEREN MISSOURI'S MOTION TO DISMISS

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company), and for its Motion to Dismiss, pursuant to 4 CSR 240-2.116(4), respectfully moves for an order dismissing with prejudice the Complaint filed in this case by Earth Island Institute d/b/a Renew Missouri (Renew Missouri), the Missouri Coalition for the Environment, the Missouri Solar Energy Industries Association, Wind on the Wires, the Alternative Energy Company, StraightUp Solar and Missouri Solar Applications, LLC (collectively, Complainants). In support of its Motion, Ameren Missouri states as follows:

I. Background

1. Complainants filed this complaint almost two years after Ameren Missouri filed its Renewable Energy Standard (RES) Compliance Plan for 2011-2013.[1] The Complaint alleges that Ameren Missouri is not in compliance with the RES statute.[2]

[1] A compliance plan covering a 3-year period must be filed annually, as provided for in 4 CSR 240-20.100(7)(B).
[2] Section 393.1020 to 393.1030, RSMo. All references herein to the foregoing sections are to the 2011 Cumulative Supplement to the Revised Statutes of Missouri. All other statutory references herein are to the Revised Statutes of Missouri (2000), unless otherwise noted.

Complainants do not, however, allege that Ameren Missouri is out of compliance with the Missouri Public Service Commission's (Commission) RES rules.[3] Moreover, with respect to Count I, Complainants do not allege that Ameren Missouri has counted any resources as a renewable energy resource in violation of the Missouri Department of Natural Resources (MDNR) rule that determines, as a matter of law, what resources count as renewable under the RES statute.[4]

2. Indeed, as outlined below, even if all of Complainants' averments are accepted as true, given that Complainants do not allege that Ameren Missouri is out of compliance with the Commission's lawfully adopted RES rules that are in full force and effect, the Complaint constitutes an unlawful collateral attack on the Commission's RES rules. Consequently, it is barred as a matter of law, and thus fails to state a claim upon which relief can be granted and must be dismissed. Moreover, Complainants are asking this Commission to perform the judicial function of passing on the validity of a rule adopted by a different agency of state government, the MDNR. The Commission possesses no such power, and thus lacks the jurisdiction to grant the requested relief.

II. Standards for Dismissal

3. A complaint fails to state a claim upon which relief can be granted when, even assuming all of the complainant's averments as true, the complaint nonetheless states no recognized cause of action *upon which the Commission may grant relief*.[5] Where the complaint constitutes a collateral attack on a Commission rule, the Commission is barred from granting any relief, the complaint thus does not state a claim

[3] 4 CSR 240-20.100.
[4] Section 393.1030.4.
[5] *St. Genevieve Sch. Dist. R-II v. Bd. of Aldermen of Ste. Genevieve*, 66 S.W.3d 6, 11 (Mo. *banc* 2002). *See also Order Granting Motion to Dismiss*, Case No. EC-2013-0420 (Eff. June 20, 2013).

upon which relief can be granted, and dismissal is required.[6] In that case the Commission, citing case law in Missouri that so holds, stated the applicable rule as follows:

> Missouri Courts have read Section 386.390.1[7] together with Section 386.550, which provides that "in all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." In *State ex rel. Licata v. Public Service Commission of the State of Missouri,* the Western District held that Section 386.550 barred a complaint challenging as unlawful a utility company rule that had been approved by the Commission. In its transfer application, the Relator complained that the Court had deprived it of the right of complaint granted in Section 386.390.1. The *Licata* Court explained that this contention was erroneous: Section 386.390.1 authorizes complaints alleging violations of Commission orders, while Section 386.550 bars complaints attacking Commission orders. The Court explained, "Section 386.390 and Section 386.550 are not in conflict but address separate problems" (Footnotes omitted).

Not only is the Complaint barred because it is collaterally attacking the Commission's RES rule, but it also attacks MDNR's rule, effectively asking the Commission to perform the judicial function of declaring MDNR's rule unlawful. The Commission possesses no such power, cannot grant any such relief, and for this additional reason the Complaint fails to state a claim upon which relief can be granted and must be dismissed.

III. Grounds For Dismissal – Count I (Hydropower)

A. The Commission Has No Jurisdiction to Disregard or Declare MDNR's Rule to be Unlawful.

4. Complainants allege in Count I that Ameren Missouri's Keokuk Energy Center (Keokuk) does not qualify as a renewable energy resource under the RES statute

[6] *See Order Granting Motion to Dismiss, Tari Christ, d/b/a ANJ Communications, et al., Complainants, v. Southwestern Bell Telephone Company, L.P. et al*, Case No. TC-2003-0066 (Jan. 9, 2003).
[7] Complainants' Complaint is brought under Section 386.390.

because the *sum* of the nameplate ratings on each of Keokuk's 15 generators exceeds the 10 megawatt limit in Section 393.1025(5).

5. It is undisputed that MDNR, pursuant to the exclusive authority granted it by Section 393.1030.4, adopted a rule (which became final, was not appealed and has the force and effect of law) establishing the certification process for renewable energy resources. MDNR's rule (codified at 10 CSR 140-8.010(2)(A)8) provides in pertinent part as follows:

> "[h]ydropower, not including pumped storage, that does not require a new diversion or impoundment of water and that *each generator has a nameplate rating of ten megawatts (10 MW) or less*." (Emphasis added).

6. The 15 generators at Keokuk have nameplate ratings of less than 10 MW. Consequently, under MDNR's rule, the Keokuk generators qualify as renewable energy resources, and have been certified as such by MDNR in accordance with its rule. MDNR's certification letter for 2011 is attached hereto as Exhibit 1.

7. In order to grant the relief Complainants seek in Count I, the Commission would have to determine that MDNR's rule is invalid as being inconsistent with the RES statute because Complainants' central contention is that under the RES statute the 10 MW limit is tested by *aggregating* the nameplate ratings of each individual generator at a site, whereas MDNR's rule unambiguously does not aggregate the individual generator nameplate ratings but instead tests the 10 MW limit on a per-generator basis. The Commission lacks the jurisdiction to make such a determination because it cannot exercise any judicial power.[8] That such a determination would be an attempt to exercise a judicial function is made clear by Section 536.050(1), RSMo., which vests the

[8] *State ex rel. Laundry v. Public Service Commission*, 34 S.W.2d 37, 46 (Mo. 1931) (The Commission "has no power to exercise or perform a judicial function.").

exclusive power to issue a declaratory judgment respecting a duly adopted rule in the judicial branch of government.[9] Lacking the jurisdiction to determine MDNR's rule to be in conflict with the RES statute, the Commission cannot grant the relief Complainants seek. Moreover, only a court, in a review proceeding under Section 386.510, can declare a Commission rule unlawful. *See Atmos* and *Clark, infra.* Count I of the Complaint therefore fails to state a claim upon which relief can be granted and must be dismissed.

B. The Commission Cannot Entertain Complainants' Unlawful Collateral Attack of its Order of Rulemaking for the RES Rules.

8. Nor does Count I state a claim upon which relief can be granted on any other ground. The Commission has also adopted a rule, 4 CSR 240-20.100(1)(K)8 (adopted in the Commission's *Revised Order of Rulemaking* in File No. EX-2010-0169) that, consistent with MDNR's rule, defines as a renewable energy resource "hydropower (not included pumped storage) that does not require a new diversion or impoundment of water and that has a *generator* nameplate rating of ten (10) megawatts or less" (Emphasis added). Complainants do not dispute that under this rule Keokuk's generators qualify as renewable energy resources so long as they each have a nameplate rating of 10 megawatts or less. Complainants do not dispute that each of the generators at Keokuk has a nameplate rating of 10 megawatts or less.[10]

9. Complainants claim is that under the RES *statute* "nameplate rating" means something different than provided for in the Commission's rule. Even if that were

[9] The Court of Appeals noted that the declaratory judgment remedy "was considered an exception to the requirement of exhaustion of administrative remedies." *Id., n.* 13. *See, Kansas Ass'n of Private Investigators v. Mulvihill*, 35 S.W.3d 425, 431 (Mo. App. W.D. 2000).

[10] Complainants have never disputed these facts, but in any event, please see the Affidavit of Warren Witt, attached hereto and incorporated herein by this reference as Exhibit 2. In his Affidavit, Mr. Witt swears and affirms on his oath that there is no nameplate at Keokuk applicable to the facility as a whole, that each generator has a nameplate affixed to it, and that each such nameplate lists the generator's capacity as less than 10 megawatts. Mr. Witt's Affidavit also swears and affirms that the picture of the nameplate attached to his affidavit is a true and correct picture of an actual nameplate on a Keokuk generator and that it is typical of the nameplates on each of the Keokuk generators.

true (it is not, as addressed further below), it would provide no basis for a complaint at the Commission because the Commission's lawfully and fully effective rule is contrary.[11]

10. As outlined in Section II of this Motion, Complainants cannot collaterally attack that rule, which is precisely what their complaint seeks to do. To the contrary, their remedy, if they contended that the rule does not comport with the statute, was to file an Application for Rehearing under Section 386.500, RSMo., and then a Petition for Writ of Review under Section 386.510, RSMo.[12] Indeed, that was their *exclusive* remedy for obtaining a determination that the Commission's rule – which Ameren Missouri is admittedly in compliance with – did not comport with the statute.[13]

11. That the Complaint is an unlawful collateral attack on the Commission's rule is made clear by what the Commission would have to do to grant the relief sought by Complainants. In order to find that Keokuk is not a renewable energy resource because the sum of the nameplate ratings of all of its generators exceeds 10 megawatts, the Commission would have to disregard its own rule. Of course the Commission is just as bound by its rule as Ameren Missouri and Complainants. The Commission, and Ameren Missouri, must abide by that rule as a matter of law. The Commission simply cannot grant the relief sought, and therefore the Complaint must be dismissed for failure to state a claim upon which relief can be granted.

C. Even if there were No MDNR or Commission Rules, there is no Relief Available to Complainants.

[11] The rule and the *Revised Order of Rulemaking* that adopted it was the subject of a review proceeding before the courts, and was affirmed in all respects by the opinion of the Missouri Court of Appeals – Western District, in *State ex rel. Missouri Energy Dev. Ass'n v. Pub. Serv. Comm'n*, 386 S.W.3d 165 (Mo. App. W.D. 2012).

[12] The *Revised Order of Rulemaking* was issued on July 1, 2010, prior to the amendment to Section 386.510, which now provides for direct review in the Court of Appeals.

[13] *State ex rel. Atmos Energy Corporation v. Public Service Commission*, 103 S.W.3d 753, 758 (Mo. banc 2003); *Union Electric Company v. Clark*, 511 S.W.2d 822, 825 (Mo. 1974).

12. Even if there were no rules that unequivocally applied the 10 megawatt limit on a per-generator basis, relief under the Complaint would not lie because the phrase "nameplate rating" in the RES statute unambiguously means the nameplate on each individual generator.

13. To determine what a statute means, the tribunal must ascertain and given effect to the intent of the legislature from the language used.[14] And that rule applies equally to statutes enacted by the General Assembly and statutes, like the RES, that are approved by voters through the initiative process.[15]

14. In determining legislative intent, words and phrases used in a statute are taken in their ordinary and usual sense,[16] and the plain and ordinary meaning of those and phrases is derived from the dictionary.[17]

15. The dictionary definition of "nameplate," which is a noun, is as follows: "a flat, usually rectangular piece of metal, wood, or plastic on which the name of a person, company, etc., is printed or engraved."[18]

16. The foregoing rules of interpretation and the plain and ordinary meaning of the noun "nameplate" dictates that the Commission determine as a matter of law that only the capacity of an individual generator is relevant to the 10 megawatt limit under the RES statute, because only individual generators have nameplates. Consequently, given that it is undisputed that each of the Keokuk generators has a nameplate rating of less than 10 megawatts, there is no relief that can be granted on the Complaint because

[14] *Gurley v. Missouri Bd. of Private Investigator Examiners*, 361 S.W.3d 406, 413 (Mo. banc 2012).
[15] *Missourians for Honest Elections et al. v. Missouri Elections Commission et al.*, 536 S.W.2d 766, 775 (Mo. App. St. L 1976).
[16] *Smith v. Shaw*, 159 S.W.3d 830, 834 (Mo. banc 2005).
[17] *Hemeyer v. KRCG-TV*, 6 S.W.3d 880, 881 (Mo. banc 1999).
[18] *Webster's New Universal Unabridged Dictionary* (2003 ed.).

Ameren Missouri is in compliance with the RES as a matter of law. There being no relief that can be granted, the Commission must therefore dismiss the Complaint.[19]

IV. Grounds for Dismissal of Count II of the Complaint (Banked RECs),

17. In Count II of the Complaint, Complainants allege that Ameren Missouri has failed to comply with the RES statute by carrying forward renewable energy credits that were surplus to its needs in the year they were created. This allegation also fails to state a claim upon which relief can be granted and, as such, must be dismissed.

18. No party proposed the addition of a start date for RES banking at any point during the rulemaking process.[20]

19. No party sought rehearing of the rule with respect to any part of it that is relevant to banking RECs.[21]

20. MDNR determined Keokuk to be an eligible renewable energy resource for 2011.

21. The Commission's RES rules do not contain a date before which RECs cannot be banked.[22]

22. The RES statute does not contain a date before which RECs cannot be banked.[23]

23. Section 393.1025(4) RSMo. defines a "renewable energy credit" or "REC" as "a tradable certificate of proof that one megawatt hour of electricity has been generated from renewable energy resource." That definition is significant because

[19] As earlier noted, each Keokuk generator has a nameplate showing a capacity of less than 10 megawatts, and the plant itself has no nameplate of any kind. Exhibit 2 hereto.
[20] *See* File No. EX-2010-0169.
[21] *See* File No. EX-2010-0169.
[22] *See* 4 CSR 240-20.100 et.seq.
[23] *See* Section 393.1030, RSMo.

Section 393.1030.1, which establishes the portfolio requirement for all Missouri electric utilities to generate or purchase electricity generated by renewable resources, specifically states that "[a] utility may comply with the [renewable energy] standard in whole or in part by purchasing RECs." Subsection 2 of that same statute further states that: "[a]n unused [renewable energy] credit may exist up to three years ***from the date of its creation***." (emphasis added.)

24. Consistent with the statutory language cited in the preceding paragraph, Ameren Missouri, like other Missouri investor-owned electric utilities, began accumulating and "banking" RECs. Complainants claim that such an action was inappropriate because those parties claim that the statute prohibits the accumulation and banking of RECs until 2011, the first year that the portfolio requirements contained in Section 393.1030(1), RSMo took effect. The fatal flaw in Complainants' allegations is that there is no language in the statute to support this claim.

25. As noted above, Section 393.1030(2) simply states that an unused REC can exist up to three years from the date of its creation. There is no language anywhere in the statute that states or suggests a "start date" for when a REC can be created, and there is most certainly no language that says a REC used to comply with the portfolio standard cannot be created until 2011.

26. There is nothing in either Section 393.1025 or Section 393.1030 that supports the arguments by Complainants that Ameren Missouri was not permitted to begin accumulating RECs in 2008 when the statute went into effect for use within the three year period the RECs remain viable. Complainants are asking the Commission to impermissibly add language to Section 393.1030(2) that would prohibit a utility from

accumulating and banking RECs prior to 2011. There is nothing in the enabling legislation that authorizes the Commission to add a qualifier where none was contained in the statute as passed by the voters of this state.

27. An agency charged with promulgating regulations to implement the provisions of an initiative petition "cannot by rule [or otherwise] change the substantive requirements of the law."[24] That case considered a challenge to a rule adopted by the Missouri Elections Commission (MEC). The plaintiffs argued for the trial court to invalidate aspects of the MEC's rule relying on their *representations* of the "intent of the electorate" in approving a ballot initiative. "It is, of course, impossible to determine the precise intention of the electorate", the appellate court observed, and it rejected the plaintiffs' appeal. The court held that it had no authority "to ignore the express language of an initiative proposal and find a voter intent not expressed in the language of the proposition."[25] "We have no right to read into an act an intent contrary to the phraseology."[26]

28. Because the statute does not prohibit banking RECs prior to 2011, as a matter of law the Commission cannot grant the relief requested and thus Count II of the Complaint fails to state a claim upon which relief can be granted.

V. Grounds for Dismissal of Count III (Unbundled RECs)

29. Count III of the Complaint claims that Ameren Missouri is not in compliance with the RES statute because it is using "unbundled" RECs that are not associated with power sold to Missouri's customers. In other words, Complainants claim

[24] *Missourians for Honest Elections*, 536 S.W.2d at 772.
[25] *Id.* at 775.
[26] *Id.*

the statute contains a geographic sourcing requirement. It does not, and neither do the Commission's RES rules.

30. The Commission considered imposing a geographic sourcing limitation in its RES rulemaking, but such a limitation is not part of the RES rule.[27] In effect, Complainants are asking the Commission to do something it has no power to do: amend its rule in the context of this Complaint, and then retroactively apply such an amendment to Ameren Missouri in support of a finding that Ameren Missouri has failed to comply with the RES. The Commission possesses no such power, cannot grant the relief requested, and therefore Count III must be dismissed for failure to state a claim upon which relief can be granted.

31. Count III is also a collateral attack on the Commission's RES rule. The Court of Appeals has made clear that "the "withdrawn provisions [for geographic sourcing] have not been published and thus are not effective.[28] [And therefore] They are not part of 4 CSR 240-20.100 and not enforceable against electric utilities."[29] While Complainants could argue that the rules *should be amended* to include a geographic sourcing requirement, the Court of Appeals made clear that to do so the Commission must follow the rulemaking procedures in Chapter 536, RSMo.: "Should the PSC decide in the future to promulgate geographic sourcing rules, it will, of course, be required to do so pursuant to the rulemaking procedures of section 536.021."[30] In addition, Complainants can no more add a geographic sourcing limitation to the statute than they

[27] At one point, the Commission had issued an order approving a rule with a geographic requirement, but later issues the *Revised Order of Rulemaking* referenced above removing portions which had been disapproved by the Joint Committee on Administrative Rules and which were the subject of Senate Concurrent Resolution No. 1. The Secretary of State published the rules without any geographic restriction and the rules were made effective without any geographic restriction.
[28] Section 536.021.8.
[29] *State ex rel. Missouri Energy Development Association*, 386 S.W.3d at 176 (2012).
[30] Id.

could add a prohibition on banking RECs, as discussed in connection with Count II of the Complaint.

32. Complainants also misstate the law relating to the Joint Committee on Administrative Rules (JCAR), but presuming for a moment that the Complainants' arguments regarding the invalidity of JCAR's action are correct, there would still be no geographic sourcing restriction in the Commission's RES rule because such restriction was never published in the *Missouri Register*[31] and does not appear in the *Code of State Regulations*. The Secretary of State did not refuse to publish the geographic sourcing restriction because of JCAR's ruling but rather acted on the Commission's revised rulemaking order which removed the geographic sourcing language from its rules. Consequently, under Section 536.021.8, RSMo. (Cum. Supp. 2011), there is no geographic sourcing rule carrying the force and effect of law.

33. Finally, Complainants' argument that the statute requires renewable energy to be delivered to Ameren Missouri customers and so RECs must be associated with energy delivery is completely without merit. This argument ignores the plain language of the statute. The sentence in the statute that Complainants rely upon for their argument reads, "The portfolio requirements shall apply to all power sold to Missouri customers whether such power is self-generated or purchased from another source in or outside of this state."[32] The portfolio requirements are the percentage of renewable power that must be provided by the utility. This sentence does not require renewable electricity to be delivered to Missouri. Instead, it is merely the method of calculation to convert the portfolio percentage to megawatt-hours. (The total amount of power sold to

[31] *Missouri Register*, Vol. 36, No. 16, pp. 1195 to 1202 (Aug. 12, 2010 ed.).
[32] Section 393.1030.2(1).

Missouri customers multiplied by the applicable portfolio percentage.) The very next sentence in the statute is key and is ignored in Complainants' argument. It reads, "A utility may comply with the standard in whole or in part by purchasing RECs."[33] A REC is defined in the statute as "…a tradable certificate of proof that one megawatt-hour of electricity has been generated from renewable energy sources."[34] By the very definition, RECs can be and are separate from energy, meaning that the Complainants' interpretation of the previous sentence cannot be correct. By the language of the statute, utilities are allowed to comply by providing renewable energy to its customers OR by purchasing RECs. Either option is acceptable. Complainants are asking the Commission to add restrictions not found in the statute and their argument must be rejected.

34. For these reasons, Count III fails to state a claim upon which relief can be granted and must be dismissed.

WHEREFORE, for the reason stated above, Respondent Ameren Missouri requests that the Commission dismiss each Count of the Complaint against Ameren Missouri with prejudice.

[33] Section 393.1030.2(1).
[34] Section 393.1025(4).

Respectfully Submitted,

/s/ Wendy K. Tatro
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ATTORNEYS FOR UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI

Dated: July 23, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss was served on counsel of record for all of the parties of record to this case via electronic mail (e-mail) or via certified and regular mail on this 23rd day of July, 2013.

/s/ Wendy K. Tatro
Wendy K. Tatro

STATE OF MISSOURI
Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director
DEPARTMENT OF NATURAL RESOURCES
www.dnr.mo.gov

SEP 28 2011

Mark Birk
Vice President-Power Operations
Ameren Missouri
PO Box 66149
St. Louis, MO 63166-6149

RE: Certification of Renewable Energy Generation Facility – Keokuk Energy Park, Keokuk, Iowa

Dear Mr. Birk:

The Missouri Department of Natural Resources (MDNR), Division of Energy, has reviewed Ameren Missouri's Application for Certification of Renewable Energy Generation Facility dated June 16, 2011, for the Keokuk Energy Park, Keokuk, Iowa as identified in that Application.

Upon review of the documentation submitted in the Application, MDNR has determined that Ameren Missouri has complied with the requirements of MDNR Rule 10 CSR 140, Chapter 8 – Certification of Renewable Energy and Renewable Energy Standard Compliance Account (10 CSR 140-8.010), specifically 8.010 (4)(C)3.A-E, and determines that the generation at this facility shall not cause undue adverse air, water, or land use impact. In accordance with 10 CSR 140-8.010(4)(C)4., MDNR issues this Certification of Renewable Energy Generation Facility for the Keokuk Energy Park Hydro Generation Facility pursuant to Section 393.1030.4 RSMo. and 10 CSR 140, Chapter 8.

Sincerely,

DEPARTMENT OF NATURAL RESOURCES

Sara Parker Pauley
Director

SPP/cpm

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OF THE STATE OF MISSOURI

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

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

AFFIDAVIT

The undersigned, being duly sworn upon his oath, states as follows:

1. My name is Warren Witt.

2. I am over the age of 18 years, and make this affidavit based upon my personal knowledge.

3. I have a mechanical engineering degree from University of Illinois and a Masters degree in Engineering Management from Missouri University of Science and Technology.

4. I am employed by Ameren Missouri as Director, Hydro Operations with responsibility for all of Ameren Missouri's hydro-electric generation, including the Keokuk Energy Center. I have had responsibility for Ameren Missouri's hydro-electric generators since November of 2005.

5. Ameren Missouri’s Keokuk Energy Center has 15 generators.

6. Each generator has affixed thereto a steel nameplate.

7. Each nameplate lists the capacity of each generator as ranging from 7.2 to 8.8 megawatts (MWs).

8. Attached hereto and incorporated herein by reference is a true and correct picture of the nameplate one of Keokuk's generators. It is typical of the nameplates on each of the other 14 generators.

9. The Keokuk Energy Center, as a whole, has no nameplate affixed anywhere on the premises which shows the aggregate capacity of the entire plant.

10. In my experience, it is standard industry practice to affix nameplates to individual generators and not to a plant showing the aggregate capacity of the entire plant.

11. In my career, I have never seen a nameplate for an entire plant, showing the aggregated capacity of a plant with multiple generators.

12. Further affiant sayeth not.

Warren A. Witt

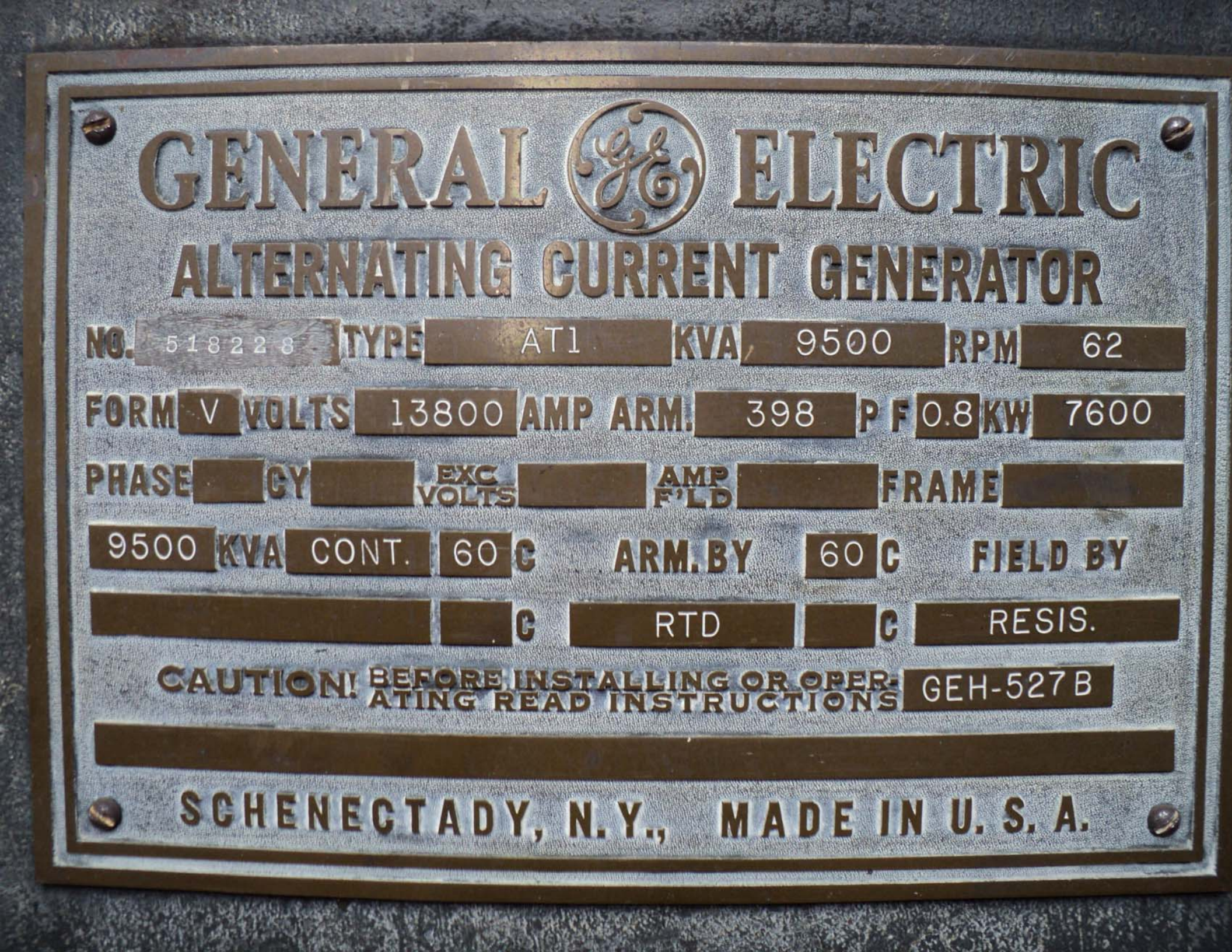
Director, Hydro Operations

On this 22nd day of July, 2013, before me personally appeared Warren Witt, known to be to be the person who, upon his oath, signed the foregoing Affidavit in my presence in the county and state aforesaid.

Julie Donohue

Notary Public

Julie Donohue - Notary Public
Notary Seal, State of
Missouri - St. Louis County
Commission #13753418
My Commission Expires 1/15/2017


GENERAL ELECTRIC
ALTERNATING CURRENT GENERATOR
NO. 518228 TYPE AT1 KVA 9500 RPM 62
FORM V VOLTS 13800 AMP ARM. 398 P F 0.8 KW 7600
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9500 KVA CONT. 60 C ARM. BY 60 C FIELD BY
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