BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

EARTH ISLAND INSTITUTE d/b/a/ RENEW MISSOURI, et. al.	)	
COMPLAINANTS	)	
v.	)	**Case No. EC-2013-0377**
UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI,	)	
RESPONDENT	)	

EARTH ISLAND INSTITUTE d/b/a/ RENEW MISSOURI, et. al.	)	
COMPLAINANTS	)	
v.	)	**Case No. EC-2013-0378**
THE EMPIRE DISTRICT ELECTRIC COMPANY,	)	
RESPONDENT	)	

ANSWER TO RESPONDENTS' MOTIONS TO DISMISS

COME NOW Complainants Earth Island Institute d/b/a Renew Missouri, Missouri Coalition for the Environment, Missouri Solar Energy Industry Association, Wind on the Wires, The Alternative Energy Company, StraightUp Solar, and Missouri Solar Applications ("Complainants"), pursuant to 4 CSR 240-2.116(4) and the Commission's July 1, 2013 Order Modifying Procedural Schedule in the above consolidated cases, and hereby submit their Answer to Respondents' Motions to Dismiss.

I. Standard for Dismissal

As Respondent Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") stated in paragraph 3 of its Motion to Dismiss, the standard for dismissal is whether the complaint states a recognized cause of action upon which the Commission may grant relief.

Respondents base their Motions to Dismiss on several grounds, including collateral attack, lack of Commission jurisdiction to grant the relief requested, and failure to state a claim regarding the substantive issues of the complaint. Complainants ask that the Commission reject Respondents' Motions to Dismiss because they have failed to meet the above standard for dismissal in any of these three areas.

II. Collateral Attack

Section 386.550, RSMo. states: "[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." Both Ameren Missouri and The Empire District Electric Company ("Empire") allege in their Motions to Dismiss that Complainants have brought an unlawful collateral attack against a final order of the Commission.

The complaints giving rise to this case include absolutely no challenges to any Commission rule or the rules of any other agency or department. Nowhere do the complaints allege that the Commission's rule (4 CSR 240-20.100) is in conflict with the RES statute (§§ 393.1025-1030, RSMo). Rather, the complaints only allege violations of the Missouri Renewable Energy Standard statute itself. Therefore, Respondents' arguments based on collateral attack are not applicable to this case.

The Commission's rules on hydropower, REC banking and geographic sourcing of unbundled RECs are not inconsistent with the statute, and any ambiguities can be removed by

proper interpretation and clarification from the Commission. Complainants have rigorously based their case on the language of the statute, resolving ambiguities with the rules of statutory construction and not statements of intent by either the supporters or opponents of the initiative. Missourians for Honest Elections v. Missouri Elections Commission, 536 S.W.2d 766, 774–5 (Mo.App. ED en banc 1976). Ameren Missouri and Empire have foisted misinterpretations on the statute that have rendered parts of it absurd or meaningless, contrary to the rules of interpretation. *Id.* at 773.

A rule is a statement of general applicability promulgated in a non-contested case. § 536.010(6), RSMo; State ex rel. Atmos Energy Corp. v. PSC, 103 S.W.3d 753, 759 (Mo. banc 2003). At the time of the RES rulemaking, Complainants were unaware of the utilities' misinterpretations, and such misinterpretations weren't brought to light until well after the Commission concluded its rulemaking. Now these issues are ripe for determination in the contested form of a complaint proceeding. In fact, Complainants are doing what the Commission required them to do when it decided that these issues could not be resolved through the RES compliance dockets. (Notices of August 15, 2012 in Cases. EO-2012-0336 and EO-2012-0351.)

The Commission is not a judicial body, but it does have authority to interpret the statutes under which it operates, including the RES. Evans v. Empire District Electric, 346 S.W.3d 313, 318–9 (Mo.App. WD 2011). On a complaint the Commission can interpret its own orders and even limit the authority it granted under a previous order, and the complaint that seeks to do this is **not** a collateral attack; indeed, the act of interpretation acknowledges the validity of the previous order. State ex rel. Public Water Supply District v. Burton, 379 S.W.2d 593, 600 (Mo. 1964); Stopaquila.org v. Aquila, 180 S.W.3d 24, 39 (Mo.App. WD 2005).

With respect to hydropower, the complaints do not allege any inconsistency between the Commission's rule (4 CSR 240-20.100(1)(K)8) and the RES statute's definition of hydropower (§ 393.1025(5)). However, both Respondents seem intent on attributing such a rule challenge to Complainants. Ameren Missouri's Motion claims in paragraph 8 that "Complainants do not dispute that under this rule [4 CSR 240-20.100(1)(K)8] Keokuk's generators qualify as renewable energy resources so long as they each have a nameplate rating of 10 megawatts or less." This is a misstatement of Complainants' case. Complainants absolutely dispute that Keokuk's generators qualify as renewable energy resources under both the Commission's rule 4 CSR 240-20.100(1)(K)8 and Section 393.1015(5). The Commission's rule can and should be read to disqualify Keokuk as a renewable energy resource. Complainants state as much in their Memorandum in Support of Motion for Summary Determination (p. 4) and in the expert testimony prepared by Ed Holt and filed on Complainants' behalf (p. 11 lines 21–23).

On p. 3 of its Motion, Empire quotes Section 386.550 (statute barring challenges to final decisions of the Commission), and observes that the Commission's rule 4 CSR 240-20.100 were found lawful and reasonable by the Missouri Court of Appeals. Again, this case does not involve an attack on any rulemaking but rather an attack on the utilities' violations of the statute. Interpreting the rule in the course of these complaints is not a collateral attack. State ex rel. Public Water Supply District v. Burton, 379 S.W.2d 593, 600 (Mo. 1964); Stopaquila.org v. Aquila, 180 S.W.3d 24, 39 (Mo.App. WD 2005).

Empire also argues, on pp. 2–3 of its Motion, that Count I is barred because Complainants failed to challenge the Commission's rule on hydropower during rulemaking:

> No one… said anything about this aspect of the proposed rule, so it was adopted by the Commission without modification. Only now have Complainants taken note of

> the language and registered their objections to the Commission's rule…. The Commission cannot now entertain a *de facto* challenge to its rulemaking order when the Complainants failed to bring their concerns and objections to the Commission's attention, and further failed to timely avail themselves of the remedy of judicial review.

The above statement reflects several misunderstandings on the part of Empire and mischaracterizes the rulemaking process that occurred in case no. EX-2010-0169. As stated several times, Complainants have not, and are not now, challenging the Commission's rule with respect to hydropower. The complaints bring neither a *de jure* nor a *de facto* challenge to any Commission rule; rather the Complainants ask the Commission to find violations of the RES statute and to clarify its hydropower rule to the extent of any ambiguity.

It has taken a specific and absurd application of the rule to reveal the controversy at hand. The Commission's published responses to the comments raised during the rulemaking shows that nobody, including the utilities, raised an issue as to the meaning of hydropower. 35 Mo.Reg. 1183, 1184. In fact, it was precisely because the meaning and intent of Section 393.1025(5) were so clear that the Commission's addition of the word "generator" slipped by without comment or discussion. Even with the word "generator" included, a plain reading of the rule still indicates that hydroelectric facilities are limited to 10 MW (see p. 9 below). To the extent that the rule is now in issue, the question is one of interpretation, not validity.

Empire would have the Commission give effect to an interpretation that was not debated during the rulemaking and which would undermine a basic purpose of the RES and result in very little new renewable energy development in Missouri. The Commission should refrain from

giving credence to such a radical interpretation, and should instead clarify that rule 4 CSR 240-20.100(1)(K)8, as published, limits hydropower to 10 MW per facility.

III. Jurisdiction of the Commission (MDNR's Rule)

Respondents also argue that the Commission lacks jurisdiction because the complaints request or require the Commission to make a determination on the validity of the Department of Natural Resources' ("MDNR") rule at 10 CSR 140-8.010(2)(A)8 concerning qualifying hydroelectric resources. They argue that this is a collateral attack and a usurpation of the judicial function. (Ameren Missouri's Motion to Dismiss, § III(A); Empire's motion at 1–2.)

Complainants are well aware that the Commission lacks jurisdiction to make a determination on MDNR's administrative rules. We do not request that the Commission make any finding with respect to MDNR's rule in granting Complainants their relief. Complainants simply request that the Commission find Respondents in violation of the RES **statute** due to their attempted retirement of RECs from hydroelectric facilities larger than the statute's 10 MW limitation (§ 393.1025(5), RSMo).

Respondents claim that MDNR has exclusive authority to certify generation resources (Ameren Missouri's Motion at 4; Empire's Motion at 2). Actually, the statute says: "The department shall, *in consultation with the commission,* establish by rule a certification process…" § 393.1030.4, RSMo (emphasis added).

The Commission nevertheless included in its own rule a definition of hydropower, and only the meaning of that definition is in issue. Furthermore, it is only the Commission that ultimately determines whether the statute and rule are being complied with. The Commission has primary rulemaking and enforcement power "except where the department is specified." § 393.1030.2, RSMo.

It is not necessary for the Commission to find MDNR's rule to be inconsistent either with the RES statute or the Commission's rule in order to grant Complainants relief. It is undisputed that the Commission has jurisdiction to determine whether violations of the RES statute and its own rule have occurred and to assess the requisite penalties. Rule 4 CSR 240-2.070 clearly allows the Commission to hear complaints involving "violation[s]… of any provision of law or of any rule or order or decision of the commission." 4 CSR 240-2.070(4).

If Respondents' argument were to prevail, Complainants would be left without a remedy. Taking Respondents' argument to its logical conclusion, Complainants would be barred from bringing this complaint, and would also be barred from challenging MDNR's rule because of the existence of the Commission's rule. This is Catch 22 logic.

IV. Substantive Issues of the Complaints

a. **Hydropower Nameplate Rating**

Respondents rely on a dictionary definition of "nameplate" and the canon of plain and ordinary meaning. (Ameren Motion at 7; Empire Motion at 4–5.) They cite no dictionary definition of the operative term, "nameplate rating."

The correct rule of interpretation is that technical terms in a statute are considered as being used in their technical sense. Bartareau v. Executive Business Products, 846 S.W.2d 248, 249 (Mo.App. WD 1993); City of St. Louis v. Triangle Fuel Co., 193 S.W.2d 914, 915 (Mo.App. ED 1946). The term at issue in Triangle Fuel was "kind of coal," a phrase consisting of everyday words which nevertheless had a technical meaning. "Nameplate rating" is a technical term not heard in ordinary parlance. Complainants have adduced overwhelming evidence that the term is used by utilities and regulators to refer to the aggregate capacity of a facility (see Direct Testimony of Ed Holt); therefore this issue cannot be dismissed.

"Credit" is defined in the Merriam Webster Dictionary as "the provision of money, goods, or services with the expectation of future payment." Webster's defines "rating" as a "relative estimate or evaluation." "Credit Rating" is defined by Webster's as "an estimate of *the amount of credit* that can safely be extended to a person or company" (emphasis added.) In this case, it is plain that the term "credit rating," while involving both the terms "credit" and "rating," has its own distinct and independent definition. This is true of many types of ratings. The definition of "rating" makes it clear that the term requires a context in order to understand its application (like "credit" or "nameplate"). A simple reading of the dictionary will not give a plain meaning to a specific type of rating which is not directly defined in the dictionary as its own term. The types of rating are too variable for such a simplistic approach. The fact that respondents were unable to provide a dictionary definition for the actual term "nameplate rating" is indicative of this.

Despite respondent's assertions, the dictionary is not the only source courts may look to for understanding a term. Respondents cite Hemeyer v. KRCG-TV, 6 S.W.3d 880, 881 (Mo. banc 1999), for the proposition that words in statutes must be given their ordinary and usual sense. However, Hemeyer cites to Spradlin v. City of Fulton, 982 S.W.2d 255 (Mo. 1998) for its proposition. Spradlin expounds: "Courts look elsewhere for interpretation only when the meaning is *ambiguous* or would lead to an *illogical result defeating the purpose* of the legislature. The phrase 'relates to' is ambiguous because it is *capable of being read differently by reasonably well-informed individuals"* (citations omitted, emphasis added). Thus, even accepting Respondents' "plain and ordinary meaning" argument would not lead to the result they desire.

As stated above, Complainants do not allege any conflict between the RES statute and the Commission's rule with respect to hydropower (4 CSR 240-20.100(1)(K)8). Although the complaint observes that the Commission's rule added the word "generator" to the definition of hydropower despite it appearing nowhere in the RES statute (¶27), the complaint never alleges that the Commission's rule is inconsistent with the statute. Rather, Complainants have argued that the Commission's rule should be read consistently with the statute as establishing a cap of 10 MW capacity per hydropower facility.[1] As observed in expert Ed Holt's Direct Testimony, the Commission's use of the plural form of the word "ratings" in its rule indicates that a hydroelectric facility's multiple generators must be taken together when determining whether it qualifies as a renewable resource. (Direct Testimony of Ed Holt, p. 11, lines 21–23.) A plain reading of the Commission's rule ("generator nameplate ratings of ten (10) megawatts or less") is fully consistent with a "per facility" limitation, and Complainants contend that such an interpretation is necessary in order to give full effect to both the letter and spirit of the RES statute. Nothing prevents the Commission from interpreting its rule at 4 CSR 240-20.100(1)(K)8 to restrict qualifying hydroelectric resources to 10 MW of facility-wide capacity.

The correct interpretation is the one that avoids absurdity. In a meeting on July 24, 2013 to kick of its 2014 IRP, Ameren Missouri revealed that Keokuk has 15 empty bays and could add 15 more generators. Under Respondents' interpretation, Keokuk could still comply as a renewable resource even if it were extended all the way across the Mississippi and had 200 generators. With such an interpretation, the statutory limit of 10 MW would be rendered meaningless by the proliferation of small generators. The limit is there for a reason, which is to

[1] See "Complainants' Memorandum in Support of Motion for Summary Determination," filed on July 23, 2013 in case no EC-2013-0377 et al., which argues that the Commission's rule can be read to support Complainants' positions and which asks the Commission to clarify its rule.

only authorize small hydropower, to the exclusion of large hydropower resources like Keokuk and Ozark Beach. Respondents are attempting to deprive the limit of any meaning, an interpretation that should be avoided. Missourians for Honest Elections v. Missouri Elections Commission, 536 S.W.2d 766, 773 (Mo.App. ED en banc 1976).

b. **Outdated RECs**

The utilities have previously argued that they can bank RECs dating up to three years before the first compliance date of January 1, 2011. Now they claim that the starting date for REC banking is the effective date of the statute (which Empire incorrectly states as January 1, 2008; the RES actually went into effect on November 4, 2008). (Ameren Missouri's Motion at 9–10; Empire's Motion at 6.) There is no warrant for this argument.

The only energy that applies to the portfolio requirement is energy which "constitutes... sales... for calendar years 2011 through 2013" (when only considering the compliance years at issue). Energy produced prior to this is not represented in the portfolio requirements by the clear language of the statute. RECs that represent such ineligible energy are insufficient for compliance, as their form does not make the energy they represent somehow compliant. RECs from 2008–2010 cannot possibly represent energy sold in 2011–2013. There is no language allowing energy other than that which is produced in the explicitly stated years (2011 forward) to somehow become compliant with the clear portfolio requirements, which explicitly only consider years starting in 2011. Just as the total sales baseline is limited to the years of compliance and the energy delivered to Missouri consumers, the energy used for compliance must be similarly limited, otherwise the entire purpose of having fixed percentages would be frustrated.

The statute says "a utility may comply... by purchasing RECs." § 393.1030.1, RSMo. This merely means that RECs representing compliant energy may be purchased instead of the

utility actually producing the compliant energy (subject to the "delivery of energy to Missouri" requirement of the preceding sentence). Energy produced in 2008–2010 clearly could not have complied with the statute, so there is nothing to indicate that a REC representing that energy would comply.

Ameren Missouri's Motion (p. 8) asserts that no one proposed the addition of a banking start date or sought a rehearing of the rule regarding such. But the existing rule, consistent with the statute, includes a clear start date in its explicit language. Again, Ameren Missouri, gave no intimation during rulemaking that it would attempt this subversion of the statute.

Any official start date would be redundant. The rule clearly defines the "portfolio requirements" as starting in 2011, and states that the renewable energy must be a specific percentage of the overall energy sales portfolio for the applicable years. While Ameren Missouri can roll over unused energy which exceeded the need for portfolio requirements, there were no portfolio requirements at all prior to 2011. It is not the mere purchase of a REC that ensures compliance, but rather the purchase of a compliant REC which substitutes for original energy production. To read otherwise would evade the purpose of the statute, which is to expand renewable energy in Missouri. A REC cannot be used for compliance if it does not represent energy which fulfils the portfolio requirement detailed in the statute, and no additional language is necessary to make this clear.

Respondents' reliance on Missourians for Honest Elections, 536 S.W.2d at 772, is misplaced (Empire's Motion at 6–7; Ameren Missouri's Motion at 10). The court in that case found that the text of the statute was unambiguous, and that the rule did not conflict with it. That is exactly the case here. The rule says the same thing as the statute in slightly different words: "An REC expires three (3) years from the date the electricity associated with the REC was

generated," 4 CSR 240-20.100(1)(J); and the portfolio requirements begin with calendar year 2011 (20.100(2)(D)). The statute could not be clearer that it has no concern with energy generated prior to 2011, and consequently no concern with RECs associated with such energy. There is no ambiguity and no need for interpretation or evidence of intent. 536 S.W.2d at 775.

Respondents' argument that there is no starting date is simply wrong. They make the classic mistake of reading one part of the statute in isolation (the 3-year REC lifespan) instead of giving proper meaning to the whole. State ex rel. Hickman v. City Council of Kirksville, 690 S.W.2d 799, 801 (Mo.App. WD 1985).

c. **Empire Solar Exemption**

Empire's Motion says (pp. 7–8) that the Commission can't do what the Court of Appeals says it can. The passage in the opinion quoted by Empire concludes, "Appellants are able to file a complaint with the PSC…and the PSC is able to grant relief." Evans v. Empire, 346 S.W.3d at 319. The opinion continues, "Appellants failed to exhaust their remedies before the PSC." Id. That is the point of this current exercise. The Commission can grant relief, though on judicial review the legal question of statutory validity will be reviewed *de novo* and the Commission's conclusions of law are not binding on the courts. Burton, 379 S.W.2d at 598.

Empire prevailed in Evans by insisting that the plaintiffs must exhaust administrative remedies before the Commission. Now Empire turns around and says Complainants can't bring those same claims before the Commission. Empire's Motion to Dismiss must fail for this reason, and for the reasons discussed below.

i. Amendment of initiative before enactment

Empire argues on p. 8 of its Motion that State ex rel. Drain v. Becker, 240 S.W. 229, 232 (Mo. Banc 1922), applies only to the referendum and not the initiative. It is true that most of the

cases, and all of the Missouri cases, arose under the referendum. But the rule has been applied to initiatives because the reasoning is the same: the legislature cannot change the question pending in an initiative before the electorate gets to vote on it. In re Initiative Petition No. 347, State Question 639, 831 P.2d 1019, 1029 (Okla. 1991); Oklahoma Tax Commission v. Smith, 610 P.2d 794, 806–7 (Okla. 1980). Smith expressly agrees with Drain. 610 P.2d at 806.

Empire tries to draw a sharp distinction, unfounded in law, between referendum and initiative, arguing that a referendum passes judgment on a law previously enacted by the legislature while an initiative is independent of the legislature (Motion to Dismiss, pp. 8–9). But in fact Proposition C **did** repeal existing law in addition to enacting new law: it repealed the "voluntary" RES enacted in 2007 and codified as the previous versions of §§ 393.1020–1035. Therefore Empire's argument fails on its own terms.

ii. Prop C repealed 393.1050

Empire argues on pp. 10–11 of its Motion that the RES and Section 393.1050 are not in conflict but that this is a case of a specific and a general law on the same subject. But Section 393.1050 is not a law that "deals with the same subject in a more minute and definite fashion" than the RES. Dover v. Stanley, 652 S.W.2d 258, 263 (Mo.App. WD 1983). Its entire purpose was to attempt a partial repeal of the RES on behalf of Empire (and any hypothetical utility that could have also met the requirements of 393.1050). It should be taken for what it is on its face, a purported repeal in advance that backfired because it was itself repealed.

Berdella v. Pender, 821 S.W.2d 846 (Mo. banc 1991), cited by Empire, is not on point. It holds that there is no "later in time rule" for acts passed in the same legislative session. 821 S.W.2d at 849. That is not the case here.

Finally, Empire argues (pp. 11–12) that the "notwithstanding clause" in Section 393.1050 makes the possibility of conflict with other laws impossible. But, as in the case cited by Empire, such a clause operates only on existing laws. One legislature cannot bind a future session, as the latter is always free to repeal the acts of its predecessors. Dorsey v. U.S., —U.S.—, 132 S.Ct. 2321, 2331, 183 L.Ed.2d 250 (2012).

iii. *§ 393.1050 is a special law*

Empire's Motion maintains that Section 393.1050 creates an "open-ended" classification (p.12). But if it ever was open (i.e., if it was possible for another utility to satisfy the renewable energy capacity requirement in such a short time), it was only momentarily so. The class of eligible utilities closed on Jan. 20, 2009.

Alternatively, Empire claims that there is a rational basis for bestowing this favor on it alone (pp. 13–4). To pass that test, there must be some characteristic of Empire that distinguishes it from the other utilities with relation to the subject matter of the RES. State ex rel. Bunker Resource Recycling and Reclamation v. Mehan, 782 S.W.2d 381, 385 (Mo. banc 1990).

As its first "rational basis," Empire asserts that it is entitled to a break on the "specific" solar requirements of the RES because it meets the "overall" standard. There is no reason to subordinate the solar standard just because it is expressed as a percentage of the total. The 2% solar standard is every bit as much an expectation of the law as the standards that can be met by varying percentages (more or less than 2%) of the other renewable energy resources.

Empire's second justification, that it would bear a more onerous compliance burden, is ludicrous. At present, Empire claims to bear no burden at all except registering RECs. The solar requirement is "two percent of each portfolio requirement" (§ 393.1030.1, RSMo.), *i.e.* 2% of

2% of sales for 2011–2013. How this is a greater burden than the other utilities bear is incomprehensible.

Empire's final justification (pp. 13–4) is essentially a recapitulation of the first: it's all right to exempt one utility (for no reason) from the solar requirements because all utilities are still subject to the overall standards. On the contrary, the effect of Section 393.1050 is to exempt one utility entirely from the RES. There is no reason for this favoritism.

d. **RECs Unassociated with Power Delivered to Missouri ("Unbundled RECs")**

Count III of the Ameren Missouri complaint (EC-2013-0377) is neither an attempt to amend the Commission's rule nor a collateral attack on that rule, for reasons more fully explained in Complainants' "Legal Memorandum in Support of Motion for Summary Determination," pp. 14–18.

First, as with the solar exemption, Complainants acknowledge the holding of Evans v. Empire District Electric, 346 S.W.3d 313 (Mo.App. WD 2011), that the Commission has jurisdiction in the first instance to interpret the statutes that apply to it, though not to declare them invalid. Complainants have therefore raised the issue of whether the Joint Committee on Administrative Rules (JCAR) has jurisdiction over the Commission's RES rule. This is on two grounds: (1) the JCAR statutes apply only to delegations of rulemaking authority by "the general assembly" (§ 536.024.1, RSMo), whereas the RES was passed by initiative; and (2) as an executive agency the Commission is subject to Executive Order 97-97, which expressly says, "each Executive Branch, department, agency, commission, and board, **except for the Public Service Commission** and the Labor and Industrial Relations Commission" shall submit its rules to JCAR (emphasis added).

Second, this is neither an attack on the rule nor an attempt to enforce the two paragraphs disapproved by JCAR. Complainants simply point out that in the absence of those two paragraphs the rule is now silent on the provenance of unbundled RECs. Therefore the rule must be interpreted to conform to the statute, which says: "The portfolio requirements shall apply to all power sold to Missouri consumers…" (§ 393.1030.1, RSMo). On p. 21 of its Motion, Ameren Missouri itself admits that "The portfolio requirements are the percentage of renewable **power** that must be **provided by the utility**" (emphasis added). Using energy not delivered to Missouri as part of the total sales baseline would be erroneous: "**electricity** from renewable energy resources shall constitute the following portions of each electric utility's sales:" Id. (emphasis added)

Ameren Missouri argues (pp. 12–3) that Section 393.1030.1 is merely a formula for calculating MWh. But Section 393.1030.1 clearly says, "The portfolio requirements shall apply to all **power** sold to Missouri consumers…" While the next sentence of Section 393.1030.1 ("a utility may comply with the standard in whole or in part by purchasing RECs") does enlarge Ameren Missouri's options, it does not, as Ameren Missouri wishes, serve to defeat the purpose of the statute. A Missouri consumer doesn't even need to be an IOU customer, so Ameren Missouri can purchase RECs from another IOU, a co-op or a muni. But those RECs must still have been associated with energy sold to those consumers. This has long been Renew Missouri's position in response to the argument that Complainants' interpretation would make it impossible to trade RECs.

CONCLUSION

Wherefore, Complainants ask that the Commission reject both Ameren Missouri and Empire's Motions to Dismiss.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been electronically mailed to all parties of record on this 16th day of August, 2013.

/s/ Andrew J. Linhares
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