BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Ameren Missouri's	)	
Submission of its 2011 RES Compliance	)	File No. EO-2012-0351
Report and 2012-2014 Compliance Plan	)	

RESPONSE TO AMEREN MISSOURI'S
REQUEST FOR COMMISSION ORDER

COMES NOW Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), on behalf of itself and the organizations listed below, and for its Response to Ameren Missouri's Request for Commission Order, states as follows:

1. On Friday, March 15, 2013, Union Electric Company d/b/a Ameren Missouri ("Ameren") submitted its Request for Commission Order, in which it requested that the Commission grant what Ameren believes to be its unresolved variance request in this case. The variance at issue involves portions of the Commission's rules to implement the Renewable Energy Standard ("RES"), specifically rules 4 CSR 240-20.100(5) and 240-20.100(7)(B)1.F, which require utilities to perform the RES Retail Rate Impact Limitation Calculation ("the Calculation") in their annual RES Compliance Plans.

2. Ameren's Request for Commission Order fails to offer any claims or explanations to establish the necessary "good cause" required by 4 CSR 240-20.100(10) to allow the Commission to grant a variance in this case.

3. In this Response to Ameren's Request for Commission Order, Renew Missouri and the parties listed below examine Ameren's given reasons for the requested variance, identify the irrelevancy and insufficiency of each reason, and respectfully request that the Commission deny Ameren a variance from 4 CSR 240-20.100(5) and 240-20.100(7)(B)1.F in this case.

Ameren's June 15, 2012 Filing Does Not Constitute a Formal Request for Variance

4. In its Request for Commission Order, Ameren states in paragraph 3: "On June 15, 2012, Ameren Missouri responded to the comments filed by other parties, and formally requested a variance from the calculation methodology set forth in the Commission's regulations." It is this June 15, 2012 "formal request" that Ameren now asks the Commission to grant nearly nine months later.

5. Ameren's filing on June 15, 2012 did not constitute a "formal request" for a variance. In fact, this "request" was embedded within Ameren's comments that were filed in response to comments from other parties, which were themselves filed in response to Ameren's 2011 RES Compliance Report. The Commission is not required to take action on comments. Furthermore, Ameren's June 15, 2012 filing did not include a request for a variance either in its "Conclusion" or in its relief requested paragraph. Appropriately, the Commission has taken no action on Ameren's June 15, 2012 Response Comments.

6. In the Commission's August 15, 2012 "Notice Regarding Ameren Missouri's 2011 Res Compliance Report And 2012-2014 Compliance Plan," the Commission determined that information contained within comments is not sufficient to trigger Commission action, and that any requests for Commission action would need to be formally filed as a direct request for a specific Commission action. Specifically, the Commission stated: "If the organizations that submitted comments, or anyone else, wants to further pursue their contention that Ameren Missouri has failed to comply with the requirements of the renewable energy statute or the Commission's implementing regulations, they may do so by filing a complaint pursuant to Section 4 CSR 240-20.100(8)(A) and the statutes and regulations governing complaints before the Commission."

7. Similarly, if Ameren Missouri wished to request a variance from their requirement to perform the Calculation required by 4 SCR 240-20.100(5) and 240-20.100(7)(B)1.F, the appropriate and effective place to do so would not have been nested within comments filed in response to comments of other parties filed in response to Ameren's April 2012 RES filings. Rather, the appropriate and effective place for such a request would have been in an application filed pursuant to 4 CSR 240-20.100(10) and the statutes and regulations governing requests for variances before the Commission.

8. Accordingly, Ameren's June 15, 2012 filing did not constitute a "formal request" for a variance from Commission rules 4 CSR 240-20.100(5) and 240-20.100(7)(B)1.F. If Ameren has made any request for a variance at all, it is in their March 15, 2013 Request for Commission Order. However, as detailed below, Ameren's reasons put forth in its March 15, 2013 filing are irrelevant and insufficient to establish the "good cause" necessary for the Commission to grant a variance.

Ameren's Request for Commission Order Offers Insufficient Good Cause

9. In its March 15, 2013 Request for Commission Order, Ameren made several statements, some of which indicate an incorrect understanding of the Calculation, and others which are simply irrelevant to whether Ameren should be granted a variance. None of the statements made in Ameren's March 15, 2013 filing are sufficient to establish the "good" cause necessary to allow the Commission to grant a variance in this case.

10. In paragraph 3, in reference to its June 15, 2012 informal variance request, Ameren states: "No party filed any opposition to this requested variance."

11. First, as explained above, Ameren's June 15, 2012 filing did not constitute a formal request for a variance. Thus, parties had no requested variance to which to respond.

12. Secondly, on January 30th, 2013, seven parties filed a Formal Complaint regarding Ameren's failure to perform the Calculation in their 2012-2014 RES Compliance Plan. The parties brought the Complaint in response to the Commission's August 15, 2012 Notice in this case, and it is currently being adjudicated in Case No. EC-2013-0381. That Complaint is in direct opposition to Ameren's failure to comply with rules 4 CSR 240-20.100(5) and 240-20.100(7)(B)1.F, the very rules from which Ameren claims to have requested a variance.

13. Regardless of the above, this document now constitutes opposition to any variances that the Commission deems Ameren to have requested. Renew Missouri and other parties did not wish to pursue a controversy over the Calculation at the time of Ameren's June 15, 2012 filing, given that the Missouri Courts had not ruled whether section 5 of the Commission's rule was valid. (*See State ex rel. Missouri Energy Dev. Assn. v. Pub. Serv. Comm'n.*, 386 S.W.3d 165 (Mo. Ct. App. 2012), upholding the Commission's rule in its entirety).

14. Also in paragraph 3 of Ameren's Request for Commission Order, Ameren states, in reference to the section 5 Calculation: "The impact of these adjustments is that the calculation, by design, produces a larger revenue requirement than the Company's last Commission approved revenue requirement."

15. This statement is irrelevant to Ameren's requested variance. Furthermore, it demonstrates either Ameren's failure to understand or its willful disregard for section 5 of the Commission's rule.

16. The impact of the "adjustments" as laid out by section 5 of the Commission's rule is unknown, given that Ameren has not performed the Calculation. But even assuming that the "impact of these adjustments" would be to "produce a larger revenue requirement than the

Company's last Commission approved revenue requirement," this information is irrelevant both to Ameren's requested variance and to how the Calculation is to be performed.

17. The RES law requires that the Commission's rule compel utilities to perform a comparison of two scenarios: one RES-compliant scenario and one utilizing standard non-renewable generation. § 393.1030.2(1), RSMo. The fact that both of these scenarios are likely to be, by design, "larger than the Company's last Commission approved revenue requirement," is irrelevant. What is relevant is the comparison between these two scenarios, and Ameren has made no attempt to calculate either scenario.

18. Thus, the inclusion of the above-quoted sentence in paragraph 3 of Ameren's Request for Commission Order provides no reason for the Commission to grant a variance and should be deemed irrelevant.

19. Ameren next states in paragraph 3 of its Request for Commission Order: "Ameren Missouri's cost to comply with the RES for this year and the next two calendar years is significantly less than one percent (1%) of its current revenue requirement."

20. The fact that Ameren's forecasted costs may be less, equal to, or more than one percent (1%) of its current revenue requirement is irrelevant both to Ameren's requested variance and to the way section 5 of the rule details how the Calculation is to be performed. Nowhere in the RES law or rule is there reference to one percent (1%) of a company's "current revenue requirement." The inclusion of this sentence demonstrates, again, either Ameren's failure to understand or Ameren's willful disregard for section 5 of the Commission's rule.

21. Next, in paragraph 3 of its Request for Commission Order, Ameren states: "Accordingly, the extra calculations are not necessary to ensure Ameren Missouri's compliance

plan is obtainable within the statutory expenditure cap for 2011, 2012, and 2013 and it is appropriate for the Commission to grant a variance from this requirement."

22. First, the calendar year of 2011 has no relevance, either to Ameren's recent variance request or to the Calculation Ameren was required to include in its 2012-2014 RES Compliance Plan.

23. Second, the phrase "extra calculations" makes no sense in this context. Section 5 of the Commission's rule spells out exactly how the Calculation is to be performed, and no provisions are of less importance or considered "extra." 4 CSR 240-20.100(5). Furthermore, Ameren has performed none of the required steps in the Calculation, much less any "extra" steps.

24. The above demonstrates that Ameren's March 15 Request for Commission Order provides no justification for why Ameren should be granted a variance, and certainly nothing rising to the level of "good cause." Moreover, Ameren's statements reflect either a misunderstanding or a willful disregard for section 5 of Commission's rule, thus increasing the need for Ameren to finally perform the Calculation as required by 4 CSR 240-20.100(5) and 240-20.100(7)(B)1.F. The Commission should deny Ameren any variances based on the lack of good cause provided in its March 15, 2013 Request for Commission Order.

Staff's Report Recommending a Waiver Does Not Establish Good Cause Necessary for the Commission to Grant a Variance

25. In paragraph 5 of its Request for Commission Order, Ameren offers as further justification for their variance: "…the reasons set forth in the Staff Report…" This statement is in reference to the Staff Report on Ameren Missouri's RES Plan ("the Staff Report"), filed on May 31, 2012, in which PSC Staff acknowledged shortcomings in Ameren's performance of the Calculation in its Compliance Plan, but nevertheless recommended that the Commission grant a variance from 4 CSR 240-20.100(7)(B)(1)F.

26. Staff's reasons justifying its recommendation for a waiver fail to establish "good cause" necessary to allow the Commission to grant a variance in this case. The reasons set forth in the May 31, 2012 Staff Report are examined below.

27. In paragraph 7 of the Staff Report, Staff states: "While the Company did include a RES retail impact limit calculation as required by 4 CSR 240-20.100(7)(B)1.F, it was not at the level of detail contemplated by the rule."

28. This statement is incorrect. Not only did Ameren fail to include "…the level of detail contemplated by the rule…" as Staff acknowledges, but Ameren failed to perform any one of the 14 specific components of the Calculation required by section 5 of the Commission's rule (see paragraph 46 below).

29. Staff's Report in paragraph 9 states: "…the calculation would serve no purpose in this instance." Again, in paragraph 9, Staff states: "…the detailed netting calculation literally serves no purpose."

30. First, it is unclear what Staff is referring to by "the detailed netting calculation." The Calculation described in section 5 of the Commission's rule involves a comparison of two scenarios – one RES-compliant scenario and another non-RES-compliant scenario using traditional generation – and it is this Calculation that is at issue.

31. Secondly, it is incorrect to state that the Calculation serves no purpose. The Calculation would serve all purposes contemplated when the Commission promulgated its rules. These purposes include, but are not limited to:

a. The ability of renewable energy companies and Missouri businesses to plan for future investments in renewable generation (or for the lack of such investments) occurring in Missouri in coming years;

b. The ability of net-metered customers and other consumers to forecast if their utility will be at or below the one percent (1%) cost threshold;

c. The ability of utilities themselves to forecast their own investments, include such forecasts in their rate modeling, and recover such investments prudently;

d. The interests of the Commission and the various stakeholders in having in place a systematic and consistent methodology for measuring the financial impact of the RES.

32. It is important to establish the practice of performing the Calculation now, particularly given that the Courts have conclusively upheld section 5 of the Commission's rule: "[4] CSR 240.20-100(5) is consistent with the intent of section 393.1030.2(1), which is to limit the retail rate impact of the RES so that rates at any time would not exceed one percent of what they would otherwise be if there were no renewable resources included in a utility's generation portfolio." *State ex rel. Missouri Energy Dev. Assn. v. Pub. Serv. Comm'n.*, 386 S.W.3d 165 (Mo. Ct. App. 2012).

33. Furthermore, Staff's recommendation gives no explanation for what "instance" would be appropriate for the Commission to require the Calculation. Staff provides no rationale for why "this instance" is different than any other instance. Without further justification, Staff's recommendation cannot represent "good cause" for the Commission to grant a variance.

34. Staff goes on to say, in paragraph 9: "Since the Company's costs for these compliance periods are significantly below the one percent (1%) retail rate impact limit…"

35. Staff's conclusion that the "Company's costs for these compliance periods are significantly below the one percent (1%) retail rate impact limit" is baseless, since Ameren has not performed the very calculation that would show whether its costs were below the one percent (1%) Retail Rate Impact. As stated above, determining the one percent (1%) Retail Rate Impact

requires a comparison of two scenarios; Ameren has not performed this comparison, nor has it performed the rest of the elements required by section 5 of the Commission's rule. Thus, Staff's conclusion in paragraph 9 offers no rationale for why Ameren should be granted a variance from 4 CSR 240-20.100(5) or 240-20.100(7)(B)1.F.

36. Finally, the Staff Report in paragraph 8 cites the provisions of Rule 4 CSR 240-20.100(10) and references additional sources detailing the meaning of "for good cause shown." We agree with Staff's rationale, and below highlight each component of their rationale and why Ameren fails each component.

37. As Staff points out, the RES rule contains no specific definition for the term "for good cause shown." We agree with Staff's reference to Black's Law Dictionary, p. 692, that "good cause shown" "…generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."[1]

38. Ameren has not only failed to give a legal excuse for failing to comply with a legal duty, they have failed to give justification of any kind. Instead, in place of the Calculation as required by section 5 of the Commission's rule, Ameren performed a completely unrelated calculation (see paragraph 44 below) not required by any rule. Including an unrelated calculation in place of a specifically required calculation does not rise to the level of a "legal excuse."

39. We also agree with Staff's assertion that, to constitute good cause, the reason or legal excuse given "…must be real not imaginary, substantial not trifling, and reasonable not whimsical."[2]

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[1] Black's Law Dictionary, p. 692 (6th ed. 1990).

[2] *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd*., 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

40. Ameren's only offered reason for not performing the Calculation was that they performed an entirely unrelated calculation which showed that their RES compliance costs were less than 1% of current revenues. It is impossible to characterize this excuse as "real," "substantial," and "reasonable," given that it bears no relation to anything in the rule and is not accompanied by any explanation for why the required Calculation could not be performed. In fact, Ameren's attempt to meet its legal burden with an unrelated calculation is much closer to an "imaginary," "trifling," and "whimsical" excuse.

41. Lastly, we agree with Staff that "…some legitimate factual showing is required, not just the mere conclusion of a party or his attorney."[3]

42. What Ameren offered in place of the Calculation in its RES Compliance Plan bears no factual or legal relationship to what it had a legal duty to include. Ameren's justification for omitting the Calculation resembles "the mere conclusion of a party or [its] attorney." In its June 15, 2012 filing and its March 15, 2013 Request for Commission Order, Ameren concludes that "the extra calculations are not necessary to ensure Ameren Missouri's compliance plan is obtainable within the statutory expenditure cap…" These statements are not based on facts or on legal standards, nor do they serve as explanations for why the Calculation cannot be performed; rather, they are simply the arbitrary conclusions of Ameren or its attorneys. As such, they fail to provide the justification necessary to constitute "good cause," according to the standards put forth in the Staff Report.

Ameren's April 16, 2012 Filing Does Not Establish Good Cause Necessary for the Commission to Grant a Variance

[3] See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975)

43. In paragraph 5 of its March 15, 2013 Request for Commission Order, Ameren puts forth as another reason to substantiate their request for a waiver: "…the reasons set forth…in the Company's April 15, 2012, filing."

44. Ameren made no filing on April 15, 2012. Assuming Ameren was referring to its RES Compliance Plan filing on April 16, 2012, the only reason listed appears on Page 16 of its Compliance Plan. It reads in its entirety: "As established in Case No. ER 2011-0028, the total annual base rate revenue requirement for Ameren Missouri is $2.61 billion. The application of a 1% rate increase would equate to a rate impact of $26.1 million. As demonstrated in Table 3, the costs affecting the annual rate impact are well below $26.1 million."

45. Ameren's reason could be paraphrased as such: "Because our costs of complying with the RES are less than what a 1% rate increase would be, we should not be required to perform the calculation as required by section 5." Again, this reasoning reflects either a misunderstanding or a willful disregard for of section 5 of the Commission's rule. There are 14 specific components included in section 5, and calculating one percent (1%) of Ameren Missouri's total revenue requirements is not one of these 14 specific components; in fact, it is not required by any part of section 5. Similarly, the Calculation set forth by section 5 has nothing to do with a "1% rate increase."

46. For the sake of clarification, below are the 14 specific components for the Calculation as required by section 5, each of which must be followed for a utility to be in compliance with the Commission's rule:

a. "…the retail rate impact shall be calculated on an incremental basis for each planning year that includes the addition of renewable energy generation directly attributable

to RES compliance through procurement or development of renewable energy resources." 4 CSR 240-20.100(5)(A);

b. "…averaged over the succeeding ten (10)-year period…" 4 CSR 240-20.100(5)(A);

c. "…and shall exclude renewable energy resources owned or under contract prior to the effective date of this rule." 4 CSR 240-20.100(5)(A);

d. "The RES retail rate impact shall be determined by subtracting the total retail revenue requirement incorporating an incremental non-renewable generation and purchased power portfolio from the total retail revenue requirement including an incremental RES-compliant generation and purchased power portfolio." 4 CSR 240-20.100(5)(B);

e. "The non-renewable generation and purchased power portfolio shall be determined by adding to the utility's existing generation and purchased power resource portfolio additional non-renewable resources sufficient to meet the utility's needs on a least-cost basis for the next ten (10) years." 4 CSR 240-20.100(5)(B);

f. "The RES-compliant portfolio shall be determined by adding to the utility's existing generation and purchased power resource portfolio an amount of renewable resources sufficient to achieve the standard set forth in section (2) of this rule and an amount of least-cost non-renewable resources, the combination of which is sufficient to meet the utility's needs for the next ten (10) years." 4 CSR 240-20.100(5)(B);

g. "These renewable energy resource additions will utilize the most recent electric utility resource planning analysis." 4 CSR 240-20.100(5)(B);

h. "These comparisons will be conducted utilizing projections of the incremental revenue requirement for new renewable energy resources, less the avoided cost of

fuel not purchased for nonrenewable energy resources due to the addition of renewable energy resources." 4 CSR 240-20.100(5)(B);

i. "In addition, the projected impact on revenue requirements by non-renewable energy resources shall be increased by the expected value of greenhouse gas emissions allowances, cost per ton of a greenhouse gas emissions tax (e.g., a carbon tax), or the cost per ton of greenhouse gas emissions reductions for any greenhouse gas emission reduction technology that is applicable to the utility's generation portfolio, whichever is lower." 4 CSR 240-20.100(5)(B);

j. "Calculations of the expected value of costs associated with greenhouse gas emissions shall be derived by applying the probability of the occurrence of future greenhouse gas regulations to expected level(s) of costs per ton associated with those regulations over the next ten (10) years." 4 CSR 240-20.100(5)(B);

k. "Any variables utilized in the modeling shall be consistent with values established in prior rate proceedings, electric utility resource planning filings, or RES compliance plans, unless specific justification is provided for deviations." 4 CSR 240-20.100(5)(B);

l. "The comparison of the rate impact of renewable and non-renewable energy resources shall be conducted only when the electric utility proposes to add incremental renewable energy resource generation directly-attributable to RES compliance through the procurement or development of renewable energy resources." 4 CSR 240-20.100(5)(B);

m. "Rebates made during any calendar year in accordance with section (4) of this rule shall be included in the cost of generation from renewable energy resources." 4 CSR 240-20.100(5)(C);

n. "For purposes of the determination in accordance with subsection (B) of this section, if the revenue requirement including the RES-compliant resource mix, averaged over the succeeding ten (10)-year period, exceeds the revenue requirement that includes the non-renewable resource mix by more than one percent (1%), the utility shall adjust downward the proportion of renewable resources so that the average annual revenue requirement differential does not exceed one percent (1%). In making this adjustment, the solar requirement shall be in accordance with subsection (2)(F) of this rule." 4 CSR 240-20.100(5)(D).

47. Accordingly, Ameren's only reason put forth in their April 16, 2012 filing is irrelevant and fails to establish the "good cause" necessary for the Commission to grant Ameren a variance to 4 CSR 240-20.100(5) and 240-20.100(7)(B)1.F. Additionally, neither Ameren's March 15, 2013 filing nor the Staff Report establish "good cause."

WHEREFORE, Renew Missouri respectfully requests that this Commission deny Ameren's March 15, 2013 Request for Commission Order and deny Ameren a variance from 4 CSR 240-20.100(5) and 4 CSR 240-20.100(7)(B)1.F.

Respectfully submitted,

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The below parties are in full agreement with Renew Missouri's Response and have given Renew Missouri permission to file this document on behalf of their respective organizations:

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been transmitted via electronic mail to the service list of record and to counsel for Union Electric Company d/b/a Ameren Missouri on this 25th day of March, 2013.

/s/ Andrew J. Linhares
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