BEFORE THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct a Wind Generation Facility.	)))))	File No. EA-2018-0202

AMEREN MISSOURI'S
POST-HEARING REPLY BRIEF

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), and for its Post-Hearing Reply Brief, states as follows:

The Office of the Public Counsel's ("OPC") brief reflects a position that is unsupported by the applicable law, is replete with contradictions, and relies on cases that fail to stand for the propositions for which they are cited and that do not support OPC's position.

1. **Section 393.1400.2(1) (the main portion of the "PISA" statute at issue) does not in any way address the 15% of return and depreciation expense, all of which qualify as RES compliance costs, that is not deferred to the PISA regulatory asset. [This Point 1 primarily responds to OPC's Argument III.A]**

At pages 5, 7, 8-9, and 11-12 of its initial brief, OPC engages in various attempts to convince the Commission either that there is an inconsistency between § 393.1400.2(1) and § 393.1030.2(4), or that the PISA statute somehow addresses the 15% of return and depreciation expense that is not to be deferred to the PISA regulatory asset in a way that precludes recovery of these RES compliance costs in the RESRAM. Statements from OPC relevant to these attempts reflect inconsistencies in OPC's position as well as a failure to either acknowledge or appreciate the legal principles that dictate how the Commission must interpret § 393.1400.2(1).

a. <u>OPC's focus on "all" is misleading.</u>

At page 5, OPC admits that § 393.1400.2(1) "does not address the remaining 15% . . .." On that point, OPC is right, albeit as discussed in this reply brief, OPC spills a great deal of ink trying to convince the Commission that indeed the PISA statute does address the remaining 15% by preventing its inclusion in the RESRAM. OPC advances it obviously inconsistent points by selectively quoting small snippets of the PISA statute and by focusing on the word "all" in those small snippets. See page 5: "This quoted subdivision of the PISA statute [a portion of § 393.1400.2(1)] refers to 'all' available depreciation expense and return for 'all' qualifying electric plant . . .." OPC's statement and the implication OPC suggests by it is misleading. The picture OPC is attempting to paint is that the PISA statute covers *all* return and depreciation expense and, that being true says OPC, it necessarily covers the 15% that is not deferred since the 15% is of course a subset of 100% of the return and depreciation. But the statement and its focus on "all" coupled with its omission of what the statute actually says is misleading. It is misleading because § 393.1400.2(1) plainly requires a deferral of "***eighty-five percent of*** all depreciation expense and return." While "some" of the depreciation expense and return on qualifying electric plant is clearly addressed in and covered by the PISA statute, clearly not "all" of it is.

Later at page 5, OPC continues its mischaracterization of the PISA statute by taking yet another snippet of it out of context, pointing to a "later subsection" [§393.1400.3(1)] and its reference to "all qualifying electric plant." The entire OPC statement is as follows: "Instead, the PISA statute continues in a later subsection that the depreciation expense deferred under PISA shall 'account for all qualifying electric plant placed in service' thereby preventing a qualifying facility from escaping PISA once an electrical corporation has so elected to use PISA." This quote is as misleading as the one discussed in the preceding paragraph because it plucks a few words from subsection 3(1) but completely ignores the actual operation of the PISA statute as a whole, while also ignoring the context in which those few words appear. The entire sentence in the statute from which those few words were plucked reads as follows: "*Depreciation expense deferred* under this section shall account for all qualifying electric plant placed in service less retirements of plant replaced by such qualifying electric plant" (emphasis added). And what depreciation expense was deferred? *Eighty-five percent* of it. Notably absent is any express or even implied attempt in the PISA statute to address the remaining 15%.

b. <u>OPC manufactures an inconsistency when there is none.</u>

OPC's next (perhaps related to the points just discussed – it is difficult to tell) tact to convince the Commission that the PISA statute somehow addresses the 15% by excising it from recovery in a RESRAM is to claim at page 7 that "[a]s both RESRAM and PISA touch upon the *same sums*, a plain reading leads to an apparent inconsistency. Therefore, PISA must prevail *to the extent* there is a conflict with the RES and RESRAM" (emphasis added). First, there is absolutely nothing inconsistent about mechanism "A" (PISA) addressing deferral and recovery of *85% of* the return and depreciation while mechanism "B" (a RESRAM) addresses the *remaining 15%*. Second, and related to the first point, OPC's claim that the "same sums" are addressed by both mechanisms is just plain wrong. To take an example, if a project constituting qualifying electric plant goes into service that generates $100 of return and depreciation expense, PISA will "touch upon" the $85 and the RESRAM will "touch upon" the $15, but the $85 and $15 are decidedly not the "same sums."

Later, at page 7, OPC engages in yet another instance of mischaracterizing the PISA statute when it states: "[w]hereas the RESRAM allows recovery of all prudently incurred RES compliance costs, but PISA explicitly limits the recovery of depreciation expense and return to eighty-five percent of the whole, the recoupment of depreciation is thus limited by PISA and excluded from RESRAM." OPC's statement is a mischaracterization because it suggests (much like OPC's earlier references to just the word "all" when what the statute says is 85% ***of all***) that PISA limits the recovery "of depreciation expense and return" when in fact the accurate statement is: "PISA explicitly limits the recovery of depreciation expense and return ***in the PISA regulatory asset*** to eighty-five percent . . .." What OPC is arguing, but doesn't want to admit it is arguing (because such an argument runs smack into the problem that amendments by implication are disfavored as a matter of law) is that "PISA *implicitly*" limits a utility's *total* recovery of depreciation expense and return *through all means* to 85%, but if that is what the General Assembly wanted to occur it had to say so as a matter of law. It didn't.

c. It is OPC who incorrectly relies upon silence in the PISA statute.

Having spent several pages claiming that § 393.1400.2 somehow addresses the remaining 15% by mandating (though it says not one word reflecting any such mandate) that it be excised from inclusion in a RESRAM, OPC, ironically, claims or at least implies that Ameren Missouri and the Staff are "adding text" to the statute (pages 8-9). As support, OPC (in this one instance) correctly states the law, that is, the legal requirement that the statute be interpreted "as written by the legislature" and that the legislature's silence on a topic seldom if ever can support a conclusion that the legislature adopted some binding legal requirement that it did not state expressly (pages 8-9). The problem with OPC's tact here, however, is that it is not *Ameren Missouri or the Staff* that are relying on the General Assembly's silence or otherwise reading into § 393.1400.2 language that all agree does not appear there, but instead, *it is OPC* that is doing so. OPC says "[t]here is no language in Section 393.1400, or elsewhere, directing electrical corporations to place the remaining fifteen percent of depreciation expense and return in any recovery mechanism, let alone [the] RESRAM." (page 9). That is absolutely true; nor did there need to be any such language. Section 393.1030.2(4) did and does require the

Commission to provide a rider that a utility can choose to use to recover prudently-incurred RES compliance costs (as explained in the Company's initial brief, not recovered elsewhere) and the Commission's rules did so by creating the RESRAM. There is no need for additional authority from the General Assembly to do what the RESRAM already allows: include these otherwise unrecovered RES compliance costs (the 15% here) in the RESRAM. Section 393.1400.2 is silent on the 15% because it doesn't impact it nor does it need to address in any way what happens to the remaining 15%.

d. OPC's flawed "consumer protection" theory.

In the second full paragraph on page 8, OPC couches its argument as a "modest consumer protection" and then attempts to explain its rationale but, as it does so, it becomes apparent that OPC fails to understand how PISA and a RESRAM work or at a minimum, is ignoring how they work. It should also be noted that all these arguments amount to stepping well beyond the plain meaning of the statute which, as explained in the Company's initial brief, the Commission cannot do here as a matter of law. Regardless, the Company will briefly address the contentions made in this paragraph of OPC's initial brief.

First, OPC incorrectly claims that "PISA incentives electric companies to build such plants without the hardship of a rate case." In fact, not a dollar of deferrals to the PISA regulatory asset are recovered until a rate case occurs, including full preservation in that rate case of the Commission's ability to disallow investments if they were not prudently made (§ 393.1400.2(2) ("The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances ordered by the commission"). Consequently, the "hardship of a rate case" will still occur.

OPC next tries to support its "consumer protection" theme by claiming that "the remaining fifteen percent of regulatory lag [that would exist under OPC's reading] not gained thus moderately insulates consumers, while also encouraging electric[al] corporations to return to the Commission soon after construction in order to start recovering depreciation expense and return." Is OPC arguing that in adopting PISA, the General Assembly wanted to encourage *more frequent* rate cases? If one is going to speculate about legislative intention, the Company respectfully submits that no rational legislator would want more frequent rate cases and the resulting constituent communications those rate cases almost certainly generate.

Finally, OPC states that "[h]aving electric utilities come before the Commission in other [sic] to forestall regulatory lag loss also protects consumers, by inviting a critical eye from stakeholders during the prudence review process." OPC apparently overlooks the fact that under PISA as written (as explained by both the Company and the Staff), 100% of the depreciation and return to be recovered via the two separate mechanisms will be subject to a "prudence review process." As just noted, § 393.1400.2(2) expressly makes the 85% subject to prudence disallowances and § 393.1030.2(4) only requires a rider for "prudently incurred" RES compliance costs. Similarly, the Commission's RESRAM rule expressly requires prudence reviews and indeed, the RESRAM OPC itself agreed to expressly complies with that rule by providing for prudence reviews. See 4 CSR 240-20.100(1)(Q) (Only prudently incurred costs fall within the definition of "RES compliance costs"); 4 CSR 240-20.100(A)26 (mandating periodic prudence reviews); Sheet No. 93.5 (Appendix C (OPC version) of RESRAM attached to the Third Stipulation and Agreement, which mandates a prudence review no less frequently than every 24 months). Contrary to OPC's claim, preventing inclusion of the remaining 15% in a RESRAM does absolutely nothing to "invite a critical eye" in a prudence review process because the prudence review process already exists – and remains fully intact – when the 15% is included in the RESRAM as contemplated by the RES statute and the Commission's RES rule.

e. <u>Other miscellaneous misstatements or flaws in OPC's Argument I.A.</u>

At page 6, OPC cites *Earth Island Institute v. Union Electric Company et al.*,[1] and claims that it provides support for its argument. OPC failed to read the case carefully.

First, OPC's apparent criticism of Ameren Missouri ("Ameren Missouri failed to defend ….") is false. The cited opinion arose out of a *consolidated* proceeding before the Commission consisting of two *separate* complaints filed by the Earth Island Institute (i.e., Renew Missouri) where Renew Missouri made certain claims against Ameren Missouri that it was not in compliance with the RES and certain claims against The Empire District Electric Company ("Empire") that it was not in compliance with the RES. Some of the claims were the same, but one of them, lodged against Empire alone, was that Empire was out of compliance with the solar energy requirements of the RES and that Empire was not entitled to avoid them despite the existence of § 393.1050. It was that claim and that claim alone that was at issue in *Earth Island* and Ameren Missouri was *not* involved in that appeal at all; indeed, by its terms, § 393.1050 did not apply to Ameren Missouri,[2] nor did Renew Missouri claim that Ameren Missouri was out of compliance with the solar provisions of the RES.[3]

Second, and aside from OPC's failure to understand the context of the case it cites, OPC's reliance on it to support its argument in the case at bar is also completely misplaced. In

[1] 456 S.W.3d 27, 34-35 (Mo. *banc* 2015).
[2] § 393.1050 only applied to an electrical corporation that had, as of January 20, 2009, already achieved 15% of renewable generation. The only utility that had done so at the time was Empire.
[3] See File No. EC-2013-0377 (the complaint proceeding against Ameren Missouri) and File No. EC-2013-0378 (the complaint proceeding against Empire), and the consolidation order (EFIS Item No. 16), dated April 9, 2013.

Earth Island, the Court concluded that § 393.1050 and § 393.1030 were irreconcilably in conflict with each other according to their express terms (the Court indicated both were unambiguous, as the quoted passage on page 6 of OPC's initial brief indicates). For unique procedural reasons arising from the fact that the ballot language that proposed the RES had been approved before § 393.1050 was passed by the legislature but had not yet been enacted by the people in the election, the Supreme Court concluded that even though § 393.1050 was the later in time statute, it did not amend or repeal the solar provisions as to Empire because such a reading would nullify the ballot initiative process, thwarting the will of the people. But none of this has anything to do with § 393.1400 and § 393.1030 because, as earlier explained, there is no conflict between them.

Next (at page 9) OPC cites to the "without any offset, reduction, or adjustment" language in § 393.1400.2(1) and claims that this language shows that the legislature wanted to preclude recovery of the remaining 15%, but that claim reflects a complete misreading of the statute. Indeed (as OPC did several times in its brief as outlined above) OPC's selective omission of key statutory language demonstrates OPC's misreading.

The statute provides: "the *balance of the regulatory asset* . . . shall be included in . . . rate base without any offset, reduction, or adjustment . . ." (emphasis added). OPC claims that the without any "adjustment" language "clearly manifests that the legislature did not wish for the *PISA balances* to be used in concert with any adjustment such as a RESRAM" (emphasis added, page 9). The Company agrees that the *PISA balances* cannot be adjusted, and *are not so used*. The "balance of the regulatory asset," which will hold *only* the 85% of return and depreciation and return that was deferred, cannot be adjusted. But since the "balance of the regulatory asset" will never hold any of the remaining 15%, a prohibition on adjusting the regulatory asset balance has nothing to do with recovery of the remaining 15% of prudently-incurred RES compliance costs in the RESRAM.

Finally, OPC points to other references to § 393.1030.2(4) in other statutes enacted by S.B. 564, claiming that mention of § 393.1030.2(4) there somehow supports the conclusion that not mentioning the statute in § 393.1400 means that the remaining 15% of prudently-incurred RES costs cannot be included in the RESRAM. OPC's statements make no sense and rest on the flawed premise that underlies OPC's position: that the plain language of § 393.1400 somehow addresses or impacts (and it would have to be by implication as earlier noted) the remaining 15%. As explained in detail above, it doesn't; there was no need to address § 393.1030.2(4) in § 393.1400 because § 393.1400 did not impact it.

2. Other statutes enacted by S.B. 564 support the Company's and the Staff's position, not OPC's [This Point 2 responds to OPC Argument III.B]

These arguments were largely addressed in both the Company's initial brief (pages 17-18) and in the Staff's initial brief (pages 10-11). OPC's basic argument is that because the statute requiring a rule implementing a RESRAM (§ 393.1030.2(4)) is referenced in certain statutes enacted by S.B. 564, the absence of a mention of § 393.1030.2(4) somehow shows that the PISA statute dictates that the remaining 15% be excluded from the RESRAM. The references cited by OPC in § 393.1655 do no such thing. OPC first points to the reference in § 393.1655.2, which is the moratorium provision of S.B. 564. The reference to § 393.1030 (and to §§ 386.266 (FAC) and 303.1075 (MEEIA)) are straightforward: even though there is a moratorium in place, rider adjustments under those three statutes can continue to be made. OPC takes this straightforward statement, which has nothing to do with how PISA *operates*, which is solely addressed in § 393.1400, and claims that it was an "opportune time" for the General Assembly to state that the remaining 15% can be included in the RESRAM. The problem with OPC's point is that since § 393.1400 did not affect the RESRAM *in the first place* there was no need to make such a statement.

OPC next cites § 393.1655.5, which makes clear that part of the overall rate subject to the rate caps in § 393.1655 is any charge under a RESRAM. But that legislative clarity doesn't at all mean that the legislature needed to endorse "the reverse" so that "a RESRAM may take on costs not ensnared by PISA." (page 11). First, of all, the remaining 15% is not "ensnared by PISA" because only the 85% of capital costs are deferred to the PISA regulatory asset. Second, as earlier discussed, adopting PISA did not suddenly convert prudently-incurred return and depreciation that constitute RES compliance costs into non-RES compliance costs. Since those costs were and remain RES compliance costs and are not otherwise recovered elsewhere, they remain eligible for recovery in a RESRAM. OPC's argument here is just another take on the argument it made in section III.A of its argument section in its initial brief; that is, that by not stating that use of PISA precludes inclusion of RES compliance costs (the 15%) in the RESRAM the PISA statute somehow precluded that inclusion, which is to say PISA (by its silence) amended the RES statute and somehow the Commission's rules that create the RESRAM in the first place. Such an implied amendment is not only disfavored by the law, but frankly makes no sense.

3. OPC misuses and misunderstands most if not all of the authorities it relies upon for its "legislative history" argument. [This Point 3 responds to OPC Argument III.C].

Both the Company's and the Staff's briefs clearly outline the controlling law here, that is, that because § 393.1400.2 is unambiguous, the Commission cannot consider the 109 pages submitted by OPC as Exhibits 127 and 128, or testimony based on them. That means that the entirety of OPC's argument III.C is completely irrelevant to the issue at bar. Yet OPC attempts to make it appear that the law sanctions OPC's detour into "legislative intent" based on bills that never became law. OPC makes that attempt by misusing and mischaracterizing all or nearly all the cases it cites, as follows:[4]

- *Humane Society*: OPC cites it for the proposition that "the courts have repeatedly endorsed consideration of un-enacted bills in their opinions." *Humane Society* has absolutely nothing to do with interpreting a statute. The question in that case was whether the Humane Society's appeal was moot because of a subsequent statutory enactment that replaced an earlier statutory enactment that the Humane Society had argued was constitutionally flawed under Article II, sec. 21 of the Missouri Constitution (which prohibits that bills be amended as they pass "through either house as to change its [the bill's] original purpose"). To consider that question, it is necessary that the court of course examine the *original* version of the bill as compared to the version that was ultimately passed. This in no way uses the earlier unenacted version to *interpret* what the enacted version means.

- *United Pharmaceutical*: This case is inapposite. The statute at issue in this case was *ambiguous* ("These arguments highlight the statute's ambiguity"[5]). As explained in the Company's initial brief, it is true that a court can consider (albeit the courts usually don't find such evidence to be very helpful), but can consider, prior unenacted bill versions when interpreting an *ambiguous* statute. That is not, however, true in the case at bar.

- *Pollard*: This case is also inapposite. The question before the court (in construing this federal statute, for which official federal legislative history existed) was whether the federal statute preempted a state statute. The court was not using prior, unenacted bills filed in the Missouri legislature to interpret an unambiguous Missouri statute.

- *Laughlin*: OPC misreads this case as well. The "legislative history" examined by the court in *Laughlin* was limited to prior *enacted* versions of the *statute at issue* over the course of several decades. Those prior *statutes* were used by the court to inform its interpretation of the current statute. The case has nothing to do with use of prior, *unenacted* versions of a bill to interpret an *unambiguous* statute.

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[4] Note also that OPC was relying on the *City of Columbia* case addressed in the Company's initial brief and, in its initial brief, OPC in part accurately summarizes what occurred in that case: "reviewing the title of the *enacting* bill to infer legislative intent" (emphasis added)). OPC Initial Brief, p. 13, n. 46. As explained in the Company's initial brief, such an examination has nothing to do with reviewing prior *unenacted* versions of a bill.
[5] 208 S.W.3d at 911.

- *Missouri-American Water:* OPC misuses this case in the same manner that it misuses *Laughlin.* The Court of Appeals reviewed prior *enactments* of prior versions of the statute, not prior, unenacted bills. Even had the case supported OPC's point, it cannot be relied upon because the opinion was superseded and no longer of any effect once the case was transferred to the Missouri Supreme Court. S*ee Philmon v. Baum,* 865 S.W.2d 771, 774 (Mo. App. W.D. 1993) (*citing* Carroll v. Loy-Lange Box Co., 829 S.W.2d 86, 90 (Mo. App. E.D. 1992) (Under Rule 83.09, a case transferred to the Supreme Court is determined the same as an original appeal and "the decision of the court of appeals . . . is of no precedential effect.")

- *Union Electric Co:* OPC misuses this case in two ways. First, the tariff at issue was ambiguous; second, the court did not examine prior, unenacted versions of any bill but instead looked to an enacted statute, § 386.266 (the FAC statute, since the case involved interpretation of the Company's FAC tariff) to resolve the ambiguity in the tariff.

- *Green* (U.S. Supreme Court case)*:* Also misused by OPC because the statute at issue was ambiguous.

- *Griggs* (U.S. Supreme Court case): It is unclear whether the statute at issue was ambiguous, but the opinion does reveal that the court gave deference to the agency's (Equal Employment Opportunity Commission's) interpretation. That suggests the statute was ambiguous (As the Staff points out in its initial brief, the federal courts do not resort to anything beyond the plain words of the statute itself if it is unambiguous).[6]

- *Stiffelman:* The opinion is unclear on whether the court found ambiguity somewhere in the Omnibus Nursing Home Act which was being examined in the case. It is true that the court considered a whole host of background on why comprehensive nursing home statutory schemes were needed (such as law review articles) in deciding whether the state's Wrongful Death Act precluded the lawsuit at issue in the case, but when it came to looking at "legislative history" of the type OPC attempts to rely upon in this case, the court emphasized a prior *statute* (a prior version of the Wrongful Death Act) instead of earlier, unenacted bills. 655 S.W.2d at 532. The case certainly does not stand for the proposition that unenacted bills can be used to interpret an unambiguous statute.

[6] Staff's Initial Brief, p. 7, n. 20 (citing *Germain*, 503 U.S. 249).

After citing to a bunch of cases that in fact do not support reliance on these unenacted bills, OPC lays-out what appears to be a challenge to the Company and Staff suggesting that that there is no reason to "omit competing versions of PISA unless one were afraid of the resulting implications." (page 13). There is a reason to "omit competing versions" that has nothing to do with fear: the *law* that says both that they can't be considered and cautions that even when they can be, they aren't very persuasive. If, as OPC claims, a "plain reading of the PISA statute"[7] proves OPC's point, then why does OPC find it so important to go beyond that plain meaning?

4. This Point 4 responds primarily to Sections I, II and IV of OPC's Initial Brief.

Starting first with Section IV, when Commissioner Hall asked counsel for OPC if the rule creating the RESRAM supported counsel's claim that the Commission can use its judgment as to how the RESRAM is "going to work in conjunction with later enacted laws,"[8] OPC's counsel promised to provide "a provision of the rule that says that costs funneled through the RESRAM are not to be funneled through other mechanisms."[9] The clear implication of counsel's statement was that the RESRAM rule itself precludes the remaining 15% to be included in the RESRAM. The rule quoted by OPC at page 16 of its initial brief, not surprisingly, says no such thing. Indeed, the recovery of the 85% and 15% consistent with the Company's and the Staff's position fully complies with the rule. The rule at issue says three things: (1) recover RES compliance costs in a RESRAM, or (2) recover them in a general rate proceeding, and (3) don't recover them in an environmental cost recovery rider, in a fuel adjustment clause, or in an interim energy charge. How will the RES compliance costs be

[7] OPC Initial Brief, p. 3.
[8] Tr. p. 55, l. 22 to p. 56, l. 2.
[9] *Id*. p. 55, l. 5-8.

recovered under the Company's and Staff's position? Eighty-five percent will be recovered in a rate case and 15% in the RESRAM and none in any of those three mechanisms. OPC fails to understand that deferral of the 85% to the PISA regulatory asset is not the means to *recover* the costs, but instead, keeps them available so that they can be recovered later *in a rate case,* just as the rule contemplates. Consequently, Ameren Missouri did not "fail to meet their [sic] burden as a CCN applicant" to seek a variance from the rule relied on by OPC, because Ameren Missouri is in full compliance with that rule, as written.

In Section II of its initial brief, OPC strings together several legal principles, citing to § 393.130's requirement that rates be "just and reasonable," stating the obvious requirement that Ameren Missouri could not implement a RESRAM that violated the law, and then suggesting that the "burden of proof" has something to do with the issue presently before the Commission.[10] The only issue before the Commission is whether § 393.1400.2 means as a matter of law that prudent RES compliance costs (the 15%) must be absorbed by the Company simply because the other 85% of such RES compliance costs are recovered through another means. The Company and the Staff's briefing and argument demonstrate that the answer to the question is a resounding "no." None of this has anything to do with the "burden of proof," which is an *evidentiary* standard applicable to convincing the *trier of fact* that the proposition on which the party with the burden of proof relies meets whatever evidentiary standard may apply. In this case, the Commission isn't trying facts. To the contrary, the Commission must apply the law as written. Doing so dictates that it rule against OPC.

Finally, in several places in its initial brief OPC states that rejecting its position would mean that the Company is (illegitimately, is the suggestion) "stacking" RES compliance costs.

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[10] OPC's Initial Brief, p. 3, including n. 5.

This is the same argument, couched in different terms, as Dr. Marke's claim in his rebuttal testimony that the Company wants to "have it both ways." As previously stated, the Company does not seek to recover more or less than the RES compliance costs it actually is incurring because it is required to comply with the RES.

WHEREFORE, the Commission should enter its order rejecting OPC's argument on the issue at bar and approving filing of a RESRAM compliance tariff on the terms reflected in Appendix B to the Third Stipulation and Agreement.

Respectfully submitted,

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

Dated: November 20, 2018.

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to counsel of record this 20th day of November, 2018.

/s/ James B. Lowery

James B. Lowery