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-____**
	)	
UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI,	)	
	)	
RESPONDENT	)	

COMPLAINT

COME NOW COMPLAINANTS, by their attorneys, pursuant to Section 386.390, RSMo and 4 CSR 240-2.070 of the Commission's Rules of Practice and Procedure, and for their Complaint against Union Electric Co. d/b/a Ameren Missouri, respectfully state as follows:

PARTIES AND JURISDICTION

1. Complainant Earth Island Institute d/b/a Renew Missouri ("Renew Missouri") has its principal place of business at 910 E. Broadway, Ste. 205, Columbia, MO 65201. Renew Missouri is a project of Earth Island Institute, a not-for-profit corporation organized under the laws of California with its principal place of business at 2150 Allston Way, Ste. 460, Berkeley, CA 94704. Renew Missouri is a registered fictitious name of Earth Island Institute under Section 417.200, RSMo. Earth Island Institute has a Certificate of Authority for a Foreign Nonprofit granted by the Missouri Secretary of State.

2. Renew Missouri was instrumental in the passage of Proposition C, or the Missouri Renewable Energy Standard ("RES"). Renew Missouri also participated in the RES rulemaking process. Renew Missouri has an interest in the full implementation and enforcement of the RES in that the organization's mission includes the advancement of renewable energy in Missouri.

3. The following Complainants are not-for-profit corporations whose missions involve protection of the environment through the furtherance of renewable technologies and the renewable industry in Missouri:

a. Missouri Coalition for the Environment ("MCE"), 6267 Delmar Blvd., Ste. 2E, St. Louis, MO 63130;

b. Missouri Solar Energy Industries Association ("MOSEIA"), P.O. Box 434040, St. Louis, MO 63143;

c. Wind on the Wires, P.O. Box 4072, Wheaton, IL 60189.

4. The following Complainants are for-profit corporations engaged in the business of renewable energy development or installation that have a business interest in the implementation of Missouri's RES:

a. The Alternative Energy Company, LLC, 4131 E. White Oak Dr., Springfield, MO 65809;

b. StraightUp Solar, 9100 Midland Blvd., St. Louis, MO 63114;

c. Missouri Solar Applications LLC, P.O. Box 1727, Jefferson City, MO 65102.

5. The signature, telephone number, facsimile number and email address of Complainants are those of their legal representatives and can be found in the signature block at the end of this complaint.

6. Respondent Union Electric Co. d/b/a Ameren Missouri ("Ameren Missouri"), 1901 Chouteau Ave., St. Louis, Missouri 63103, is an electrical corporation and public utility as defined in Section 386.020, RSMo engaged in the business of the manufacture, transmission, and

distribution of electricity subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo.

7. Complainants have sent a copy of this complaint to Ameren Missouri. In addition, the issues and arguments in this complaint have been thoroughly aired with Ameren in Case No. EO-2012-0351 reviewing Ameren's 2011 Compliance Report, as well as in the previous year in Case No. EO-2011-0275 reviewing Ameren's 2011-2013 RES Compliance Plan.

8. The Commission has subject matter jurisdiction over this complaint because it involves a utility's violation of a law – Section 393.1030, RSMo – which delegates regulatory authority to the Commission. § 386.390.1, RSMo. The Commission also has primary jurisdiction, for purposes of judicial review, of the legal issues raised herein. *Evans v. Empire District Electric*, 346 S.W.3d 313, 318-319 (Mo. App. WD 2011).

9. Complainants Renew Missouri, MCE, MOSEIA, and Wind on the Wires are aggrieved in that Ameren Missouri's failure to comply with the law damages and threatens the Complainants' organizational missions as described in paragraphs 2-3 above.

10. The business Complainants listed in paragraph 4 have a professional interest in the full implementation and enforcement of the RES and are aggrieved by the loss of business opportunities in the state due to Ameren's violation of the law.

BACKGROUND

11. In November 2008, Missouri voters approved Proposition C, otherwise known as Missouri's Renewable Energy Standard, now codified as Sections 393.1020-1035, RSMo. Proposition C requires "electrical corporations," as defined by Section 386.020(15), RSMo to achieve increasing percentages of their sales with electricity from renewable energy sources: two

percent of sales in the years 2011-2013; five percent from 2014-2017; ten percent from 2018-2020; and fifteen percent in each calendar year beginning in 2021.

12. Other relevant portions of the RES statute are summarized below:

a. The RES law states: "The portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state. A utility may comply with the standard in whole or in part by purchasing RECs." § 393.1030.1, RSMo.

b. The RES law includes within the definition of "renewable energy resources:" "hydropower that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less, …" § 393.1025(5), RSMo.

c. The RES law requires that: "At least two percent of each portfolio requirement shall be derived from solar energy." § 393.1030.1, RSMo.

d. The RES law provides: "An unused credit [REC] may exist for up to three years from the date of its creation." § 393.1030.2, RSMo.

e. The RES law requires the rules to include a provision requiring "penalties of at least twice the average market value of renewable energy credits for the compliance period for failure to meet the targets…" § 393.1030.2(2), RSMo.

13. On December 2, 2009, the Commission opened a rulemaking case to adopt rules necessary to enforce the RES, as required by Section 393.1030.2, RSMo. After taking voluminous comments and holding a public hearing, the Commission transmitted an order of rulemaking to the Secretary of State and the Joint Committee on Administrative Rules ("JCAR") on June 2, 2010.

14. On July 1, 2010, after holding hearings on the rule, JCAR voted 10-1 to disapprove paragraphs (2)(A) and (2)(B)2 of the Commission's rule, 4 CSR 240-2.100. These two paragraphs clarified the statute's requirement that, if power originating from renewable sources outside of Missouri is used for compliance, utilities must provide proof that this power was actually sold or delivered to Missouri customers.

15. On July 6, 2010, the Commission transmitted a Revised Order of Rulemaking to the Secretary of State including paragraphs (2)(A) and (2)(B)2. The Secretary of State subsequently published the rule in the Missouri Register and in the Code of State Regulations with the text of paragraphs (2)(A) and (2)(B)2 absent and replaced with the word "Reserved." The resulting rule, 4 CSR 240-20.100, became effective on September 30, 2010.

16. Absent these provisions that remain unpublished by the Secretary of State, the rules are silent on the use of so-called "unbundled" RECs for purposes of RES compliance. All that remains is the statute's clear statement that the portfolio requirements "shall apply to all *power* sold to Missouri consumers whether such power is generated or purchased from another source in or outside of this State." § 393.1030.1, RSMo. (emphasis added)

17. In April of 2011, Ameren Missouri submitted its RES Compliance Plan for 2011-2013, as required by 4 CSR 240-20.100(7)(B). In Case No. EO-2011-0275 the Commission heard arguments on comments made by Renew Missouri, PSC Staff, and Ameren Missouri on many of the issues involved in this complaint.

18. In its October 5, 2011 "Notice Regarding Ameren Missouri's 2011 RES Compliance Plan," the Commission declined to make a determination on Ameren Missouri's plan, indicating that it would make a final determination of whether Ameren Missouri had met

the requirements of the RES after the company filed its 2012 report. Notice Regarding Ameren Missouri's 2011 RES Compliance Plan at 2.

19. In April of 2012, Ameren submitted its 2011 RES Compliance Report and 2012-2014 Compliance Plan in Case No. EO-2012-0351, as required by 4 CSR 240-20.100(7). 2011 was the first year in which utilities were required to achieve compliance with the RES.

20. Ameren Missouri's theory of compliance in its 2011 RES Compliance Report is summarized below:

a. Ameren Missouri attempted to retire 733,598 RECs from the Keokuk Hydro-electric Generation Station. Ameren Report at 9. The facility is in its 100th year of operation and has a total capacity of 137 MWs, with each of its 15 separate turbines having an individual capacity ranging from 7.2 to 8.8 MWs. Id. The RECs produced at Keokuk and retired for 2011 compliance were of a 2008 vintage. Id. at 13.

b. Ameren Missouri attempted to retire 14,971 solar RECs ("SRECs") purchased from various third party brokers and taken from the Western Renewable Energy Generation Information System (WREGIS). Ameren Report at 8. These SRECs are "unbundled," meaning the energy associated with the production of the SRECs was never delivered to Missouri or to any Ameren Missouri customer. Of the 14,971 SRECs Ameren Missouri purchased from WREGIS, 12,606 were purchased in 2010, while the rest were purchased in 2011. Id. at 8.

21. In late May of 2012, various parties submitted comments to the Commission regarding Ameren Missouri's 2011 RES Compliance Report. Parties who submitted comments included environmental and not-for-profit groups, for-profit solar installers, Wind on the Wires and the Wind Coalition, and the Missouri Department of Natural Resources ("MDNR").

22. On May 31, 2012, the PSC Staff issued its Report on Ameren Missouri's 2011 RES Compliance Report and 2012-2014 Compliance Plan, as they are required to issue by 4 CSR 240-20.100(7)(D). PSC Staff identified no deficiencies in Ameren Missouri's 2011 RES Compliance Report. Staff Report on Company's 2011 RES Compliance Report at 1.

23. On August 15, 2012, the Commission issued its "Notice Regarding Ameren Missouri's 2011 RES Compliance Report and 2012-2014 Compliance Plan" in Case No. EO-2012-0351, indicating that the Commission plans to take no further action on Ameren Missouri's Compliance Report unless interested parties file formal complaints to address the issues.

COUNT I: HYDROPOWER

24. Complainants incorporate paragraphs 1-23 herein by reference.

25. Ameren Missouri has failed to comply with Missouri's RES in that it has attempted to retire 733,598 RECs produced from a hydroelectric facility that does not qualify as a "renewable energy resource" as defined by Section 393.1025(5), RSMo.

26. Ameren Missouri argues that because Keokuk's 15 separate turbines fall under the RES' 10 MW limitation, the aggregate capacity of the Keokuk facility should qualify for purposes of non-solar compliance.

27. The RES statute does not say "hydropower generator" rating, but simply "hydropower… nameplate rating." The RES rules added the word "generator" to the definition of "hydropower," despite the word appearing nowhere in the RES statute. 4 CSR 240-20.100(1)(K)(8).

28. It is common industry practice to use the word "nameplate" to refer to the combined turbine rating of a hydroelectric facility. This is similar to references made to a coal

plant's generating capacity regardless of the number of individual boilers in the facility, or references made to the horsepower of an engine regardless of the number of pistons firing inside.

29. The intent of limiting hydropower to 10 MW is to prevent large pre-existing sources from swallowing non-solar compliance targets, and to prevent the environmental impacts of large dams, as indicated by the statute's prohibition against "a new diversion or impoundment of water…" § 393.1025(5), RSMo.

30. Because Keokuk does not qualify as a renewable energy resource, as defined by Section 393.1025(5), RSMo, Ameren Missouri is out of compliance with its non-solar obligations in the amount of 733,598 MWh.

COUNT II: PRE-COMPLIANCE ERA RECs

31. Complainants reincorporate lines 1-23 herein by reference.

32. Ameren Missouri has failed to comply with Missouri's RES in that it has attempted to retire RECs associated with energy created at a time before RES compliance began.

33. The RES' three-year rollover provision states: "An *unused* credit [REC] may exist for up to three years from the date of its creation." § 393.1030.2, RSMo (emphasis added). On this basis, Ameren Missouri claims it can meet the 2% 2011 compliance target by retiring RECs it has collected since January 1, 2008. Specifically, Ameren has retired 733,598 Keokuk RECs and 12,606 out-of-state SRECs, which were created prior to 2011.

34. Section 393.1030.2, RSMo refers specifically to "unused" RECs. RECs created from 2008 through 2010 cannot be considered "unused" because there was no requirement in effect during that time. Prior to 2011, there was no similar purpose for which RECs could be used or retired. The RES rules themselves were not even in place until September 2010. Thus RECs created prior to 2011 cannot be considered "unused" for purposes of Section 393.1030.2,

RSMo.

35. Section 393.1030.1, RSMo makes it clear that the renewable power used for compliance shall constitute 2% of the utility's sales starting in 2011. RECs created before 2011 cannot "constitute" a portion of sales in 2011.

36. The rules require that utilities list in their compliance reports "the identification, by source and serial number, of any RECs that have been carried forward to a future calendar year." 4 CSR 240-20.100(7)(A)G. Ameren Missouri has not demonstrated it has done this for the years 2008 through 2010. Furthermore, the rules do not provide for a way to retroactively bring RECs forward from the past; the rules only provide a mechanism for carrying RECs forward in time from the present.

37. Section 393.1030.2, RSMo permits leftover RECs to carry over from one compliance year to the two subsequent compliance years. Essentially, this enables carrying forward RECs that could have been "used" for compliance but were surplus to a utility's needs in the year they were created. The statute does not allow past RECs to be resurrected and carried forward from a time when the portfolio standards did not exist yet. 2008, 2009 and 2010 were not compliance years. The compliance period began in 2011, and therefore all RECs used for compliance must have originated on or after January 1, 2011.

38. A majority of the RECs Ameren Missouri attempted to retire were from 2008-2010. Therefore, according to the Company's 2011 Compliance Report, Ameren Missouri is out of compliance in the amount of 733,598 MWh for its non-solar obligations and 12,606 MWh for its solar obligations.

COUNT III: UNBUNDLED RECS

39. Complainants reincorporate lines 1-23 herein by reference.

40. Ameren Missouri has failed to comply with the Missouri RES in that it has attempted to retire 14,971 "unbundled" SRECs, which are not associated with power sold to Missouri consumers.

41. Section 393.1030.1, RSMo states: "The portfolio requirements shall apply to *all power sold to Missouri consumers* whether such power is self-generated or purchased from another source in or outside of this state. A utility may comply with the standard in whole or in part by purchasing RECs." (emphasis added)

42. The first sentence of Section 393.1030.1, RSMo concerns "power," both self-generated and purchased. The mention of "RECs" in the second sentence supplements this first sentence. While the statute allows RECs to be used to demonstrate compliance, such RECs must still represent "*power* sold to Missouri consumers…" § 393.1030.1, RSMo (emphasis added). To read the second sentence as allowing unbundled RECs is to contradict the basic meaning of the first sentence of 393.1030.1. Whether utilities use their own generation or purchase RECs, the statute is clear that utilities may only comply by demonstrating that power is actually sold to Missouri consumers.

43. The RES is meant to encourage renewable energy development in Missouri. This has the twin aims of protecting the public from the pollution caused by fossil-fuel generation and fostering renewable industries that previously have had little presence in Missouri. Unbundled RECs from distant generating sources promote neither of these goals. The tracking and trading of RECs is secondary to these goals and is meant to ensure that the energy each REC represents is eligible under the statute; but eligibility is always contingent on delivery of *power* to Missouri consumers.

44. The directive from JCAR disapproving paragraphs (2)(A) and (2)(B)2, and the Secretary of State's subsequent refusal to publish the Commission's final rule including (2)(A) and (2)(B)2, do not preclude consideration of this issue because they were both unlawful actions, in that:

a. The Missouri Supreme Court has held that JCAR may not unilaterally suspend or veto a regulatory action of the Executive Branch, as per the Separation of Powers clause of the Missouri Constitution, Article II, § 1. *Missouri Coalition for the Environment v. Joint Committee on Administrative Rules*, 948 S.W. 2d 125 (Mo banc 1997).

b. The authority of JCAR to review administrative rules does not apply to rules promulgated under a statute passed by ballot initiative, but only to rules promulgated under statutes passed by the General Assembly. § 536.024.1, RSMo.

c. Executive Order 97-97 exempts the Commission from submitting to JCAR.

45. Ameren Missouri retired 14,971 SRECs without demonstrating that such power was sold to Missouri consumers. Neither the statute nor the rules make any mention of power generated and sold outside the state of Missouri. The RES statute concerns itself only with "power sold to Missouri consumers." § 393.1030.1, RSMo. Therefore, Ameren Missouri is out of compliance for its solar obligations in the amount of 14,971 MWh.

RELIEF REQUESTED

WHEREFORE, Complainants pray that the Commission:

1. Find Ameren Missouri in non-compliance with Missouri's RES law for compliance year 2011 in the amount of 748,569 MWh.

2. Order Ameren Missouri to pay the minimum financial penalties required by 4 CSR 240-20.100(8), and such other penalties as the Commission deems appropriate.

3. Find that the Keokuk Hydro-electric Generation Station does not qualify as a renewable energy resource as defined by Section 393.1025(5), RSMo, and thus RECs from the facility may not be used for compliance with the RES.

4. Find that RECs created prior to the compliance period (prior to 2011) do not qualify as renewable energy resources as defined by Section 393.1025(5), RSMo, and thus cannot be used for compliance with the RES.

5. Declare that RECs and SRECs unassociated with power sold to Missouri consumers do not qualify as renewable energy resources as defined by Section 393.1025(5), RSMo, and thus cannot be used for compliance with the RES.

6. Order such other relief as the Commission shall deem just and appropriate.

Respectfully Submitted By:

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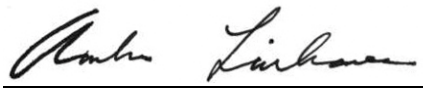
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was delivered via electronic mail on the 30th day of January, 2013 to Respondent Union Electric Co. d/b/a Ameren Missouri.



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