BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Repository File Concerning Ameren Missouri's Submission of its 2011 RES Compliance Plan.	)))	File No. EO-2011-0275

RESPONSE TO COMMENTS OF RENEW MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri (Company or Ameren Missouri), and in response to the *Comments of Renew Missouri*, respectfully states:

1. On April 15, 2011, Ameren Missouri submitted its Renewable Energy Standard (RES) Compliance Plan (RES Plan) for calendar years 2011 through 2013.

2. On June 3, 2011, Renew Missouri and the Staff of the Missouri Public Service Commission (Staff) filed Comments on Ameren Missouri's RES Plan. In their Comments, Renew Missouri alleged three areas where they do not believe the Company's RES Plan complies with the RES statute and/or the Commission's rules issued thereunder.[1] Each of those areas is addressed below. Significantly, the Staff Report and Recommendation disagrees with Renew Missouri in that the Staff concluded that Ameren Missouri's RES Plan is in full compliance with the applicable statute and rules.

KEOKUK

3. Renew Missouri alleges that the Keokuk hydroelectric plant should not be counted as a renewable resource. Despite the multiple arguments set forth in their Comments, Renew Missouri ignores on-point, controlling law; that is, this Commission's RES rules and

[1] Section 393.1025 RSMo, et. seq.; 4 CSR 240-20.100, et. seq.

rules relating to renewable energy resources issued by the Missouri Department of Natural Resources (DNR). Those rules establish that any "generator" that has a "nameplate rating" of ten (10) megawatts or less is renewable energy resource. The Commission's rules define a "Renewable Energy Resource" as including "Hydropower…that has generator nameplate ratings of ten (10) megawatts or less."[2] DNR's rules define "Eligible Renewable Energy Resources" as including "Hydropower…that each generator has a nameplate rating of ten megawatts (10 MW) or less."[3] These rules are consistent with the RES statute itself, which defines "Renewable Energy Resources" as "electric energy produced from…hydropower…that has a *nameplate rating* of ten megawatts or less..." (emphasis added).[4]

4. The subject rules refer to the "nameplate rating" of each generator in a power plant because only generators have nameplate ratings. This is borne out by standard industry usage of the phrase "nameplate rating." For example, the Edison Electric Institute's (EEI) Glossary of Electric Industry Terms defines "nameplate rating" as "The full-load continuous rating of a generator prime mover or other electrical equipment under specified conditions as designated by the manufacturers. It is usually indicated on a nameplate attached mechanically to the individual machine or device."[5] The Keokuk Plant contains 15 generators, each of which has a different nameplate attached, as shown by the pictures of the nameplate attachments of two of the generators, included in Exhibit 1 to this Response. Nameplate rating does not, as Renew Missouri asserts, commonly mean an aggregate rating for the entire power plant.

5. Both the Commission's rules and DNR's rules contain definitions which make it

[2] 4 CSR 240-20.100(1)(K)(8).

[3] 10 CSR 140-8.010(2)(A)8.

[4] Section 393.1025(5) RSMo.

[5] Edison Electric Institute, Glossary of Electric Industry Terms, April 2005 p. 99.

clear that one is to look at the nameplate rating of each generator in use at a given plant site. There is nothing in the statute nor in these rules that requires aggregation of the nameplate ratings from multiple generators, or that even suggests that such aggregation is appropriate. The EEI glossary also defines "generator," as follows: "A machine which transforms mechanical energy into electric energy."[6] *Webster's Dictionary* has a very similar definition: "A machine by which mechanical energy is changed into electrical energy."[7] A power plant is not a "machine." A power plant is comprised of buildings, structures, machinery, roads, fences, and other components. A "generator," however, is a machine, and it is the generator and the generator alone that changes mechanical energy into electrical energy.

6. Renew Missouri cites various non-controlling sources in its attempt to support its argument, but reliance on those sources is inappropriate. While the Company believes that the definitions contained in the RES statute and the above-cited rules are clear, even if there were ambiguity, Missouri courts routinely look to industry definitions and in particular the dictionary definition of terms to find their meaning. The Commission and DNR adopted their definitions pursuant to the statutory process for adopting rules including publication, notice and a hearing. Renew Missouri participated in the Commission rulemakings but chose not to participate in the DNR rulemaking. Renew Missouri did not oppose the proposed definitions and thus missed their opportunity to argue for a different definition of renewable energy resource. They are attempting to use the Company's RES Plan as a vehicle to reargue the rules, which is an impermissible collateral attack on the rules.[8]

[6] Id, p. 714.

[7] Merriam-Webster, 2011.

[8] However, given the language in the RES statute, adoption of a different definition for renewable energy resources in the rules would not have been permissible even if Renew Missouri had proposed such a definition.

7. Renew Missouri also cites another portion of the RES statute, which contains an exemption applicable to The Empire District Electric Company (Empire), in an attempt to provide an analogy as to why the aggregation of the nameplate ratings of all the generators at a plant site should be used instead of the nameplate rating of each generator. The RES statute says the exemption applies to a utility that "…achieves an amount of eligible renewable technology nameplate capacity equal to or greater than fifteen percent of such corporation's total owned fossil-fired generating capacity…"[9] Renew Missouri argues that "nameplate capacity" in this context refers to the aggregate of the nameplate ratings of all of the utility's generators, even without directly saying so, and we agree – that phrase does refer to the aggregate capacity of the utility, because given what this particular provision is trying to do, it must. Indeed, this provision proves our point because Renew Missouri ignores that quoted portion of Section 393.1050 itself *applies to a utility as a whole.* Consequently, the provision makes no sense unless a comparison of the "total" nameplate capacity of the utility as a whole is made to the "total" fossil fuel capacity of the utility as a whole. In other words, a *utility's* "nameplate capacity" has to be the sum of the nameplate ratings for all of that utility's generators. In contrast, the definitions of "renewable energy resource" discussed above were not promulgated by reference to a utility as a whole, and there is nothing in those definitions that suggests aggregation of the nameplate ratings of multiple generators within in single power plant, or across a utility's system as a whole.

8. In summary, Renew Missouri's Comments are not, as they should be, a commentary on whether Ameren Missouri's RES Plan meets the requirements of the statute and rules. Rather, their Comments are a collateral attack on the provisions of the statutes and the

[9] Section 393.1050 RSMo.

rules themselves, because their Comments urge the Commission to adopt definitions different from those contained in the statute and the rules. Ameren Missouri's RES Plan is an explanation of how Ameren Missouri intends to comply with the law *as written*. Ameren Missouri is not required to comply with the law as Renew Missouri wishes it had been written.

RENEWABLE ENERGY CREDIT BANKING

9. Renew Missouri next disputes the validity of Ameren Missouri (and of Kansas City Power & Light Company and Empire) using banked Renewable Energy Credits (RECs) from power generated from renewable energy resources by the Company since January 1, 2008.

10. Renew Missouri does not deny that the Commission's rules allow utilities in Missouri to bank RECs.[10] The rules do not explicitly contain a date before which the initial banking may not occur. However, the rules limit REC banking to three years, creating a natural start date of January 1, 2008 (as the requirement to provide a percentage of a utility's electric power from renewable resources began January 1, 2011). For the Commission to now restrict banking to less than three years would effectively punish Ameren Missouri for its early investment in renewable energy.

11. Renew Missouri also argues that retroactive REC banking should not be allowed because it violates the requirement that renewable energy must "constitute" a portion of sales for a given time period.[11] However, Renew Missouri ignores language in that same portion of the statute which follows the language they quote which allows the utility to comply in whole or in part by using RECs. Again, Renew Missouri fully participated in the Commission's rulemaking proceeding and did not offer any comment on whether banking should or should not be allowed, nor did it comment on what specific date banking should be allowed to begin. Since the

[10] 4 CSR 240-20.100(1)(J).

[11] Section 393.1030.1 RSMo.

Commission must review Ameren Missouri's Compliance Plan under the rules currently in effect, this argument should be rejected as an impermissible collateral attack on the rules.

ENVIRONMENTAL IMPACT

12. Renew Missouri's third objection to Ameren Missouri's RES Plan is that the Company has not yet gone through DNR's certification process, which would include an examination of the utility's environmental law compliance. DNR's rules only just became effective on January 30, 2011, but under the Commission's rules, Ameren Missouri was required to make its initial RES Plan filing just 75 days later, on April 15, 2011. In the short period of time between those two dates, it was not practical for Ameren Missouri to complete the certification process. Ameren Missouri has discussed the certification requirements with DNR personnel and is working with them, and anticipates making its DNR certification filing later this year. Staff has also been involved in some of these discussions. Accordingly, Ameren Missouri's 2012 filing will contain a more thorough discussion of this issue. Ameren Missouri will continue to keep Staff up to date on this effort and will alert the Commission's Energy Department of the filing and of any determination made by DNR on Ameren Missouri's application.

13. While it is not clear that the Commission's rules contemplated that certification would be complete by the time the Company's first RES Plan was due, if the Commission believes such a requirement is implicit in its rules, Ameren Missouri hereby requests that the Commission waive any such requirement for good cause, pursuant to the provisions of 4 CSR 240-20.100(7)(B)1.F. This waiver would be similar to the waiver requested relating to performing a simplified version of the revenue requirement impact of its RES Plan for the Company's first RES Plan filing.

WHEREFORE, Ameren Missouri respectfully requests the Commission grant the above-requested waiver to the extent the Commission concludes a waiver is necessary, and that the Commission find that Ameren Missouri's RES Plan filing is in compliance with the RES statute and regulations.

Respectfully submitted,

Union Electric Company d/b/a Ameren Missouri

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following parties on the 10th day of June, 2011.

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