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	)	

MOTION FOR SUMMARY DETERMINATION

COME NOW 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"), and pursuant to 4 CSR 240-2.117, respectfully moves that the Missouri Public Service Commission grant summary determination in favor of Complainants. In support of its Motion, Complainants state as follows:

On January 30, 2013, Complainants filed formal complaints with the Commission alleging violations of the Missouri Renewable Energy Standard ("RES") on the part of Union

Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and The Empire District Electric Company ("Empire"). The Commission consolidated these cases.

The complaints ask that the Commission find the utilities in violation of the RES, assess the corresponding penalties authorized by law, and clarify that the following types of RECs do not qualify as renewable energy resources as defined Section 393.1025(5), RSMo and thus cannot be used for compliance, according to the RES statute and the Commission's rules:

a. RECs from hydroelectric power facilities larger than 10 MW;

b. RECs created prior to the compliance period (prior to 2011);

c. RECs and SRECs unassociated with power sold to Missouri consumers.

The complaint against Empire further asks the Commission to find Empire in violation of the RES' solar energy requirements and to declare that Section 393.1050, RSMo, which Empire claims exempts it from such solar requirements, is inapplicable or otherwise invalid.

Under 4 CSR 240-2.117(1)(A), a motion for summary determination shall not be filed less than 60 days prior to hearing except by the Commission's leave. On July 1, 2013, the Commission granted the parties' joint motion to modify the procedural schedule, and in so doing ordered the parties to file dispositive motions by July 23, 2013. The Commission's July 1, 2013 Order constitutes leave for parties to file a motion for summary determination under 4 CSR 240-2.117(A).

As demonstrated below, there exists no genuine issues as to any fact material in this case.

COMPLAINANTS' INTEREST IN THE CASE

1. There are no genuine issues with Complainants' rights to bring these complaints, as shown through Complainants' responses to Empire's 1st Set of Data Requests. EXHIBIT 17.

2. Earth Island Institute, d/b/a Renew Missouri ("Renew Missouri") has an institutional mission and interest in promoting renewable energy, and was active in the campaign to pass Proposition C. EXHIBIT 17, DRs 001, 007, 014, 024.

3. The Missouri Coalition for the Environment also has an institutional mission and interest in promoting renewable energy, and was active in the campaign to pass Proposition C. EXHIBIT 17, DRs 008, 015, 025.

4. Wind on the Wires has an organizational mission to overcome barriers wind energy throughout the Midwest, including Missouri, and represents the interests of its members which have lost business opportunities in Missouri as a result of Ameren's and Empire's violations of the law. EXHIBIT 17, DRs 003, 010, 017.

5. The Missouri Solar Energy Industry Association ("MOSEIA") has a mission to expand the solar energy industry in Missouri; MOSEIA and its members' interests in business opportunities have been harmed by Empire's failure to observe the solar rebate and solar carve-out provisions of the RES. EXHIBIT 17, DRs 009, 016.

6. The Alternative Energy Company is situated near Empire's service territory. It is aggrieved by the loss of solar energy business opportunities due to Empire's failure to observe the solar rebate and solar carve-out provisions of the RES. EXHIBIT 17, DRs 004, 011, 018.

7. StraightUp Solar is a solar energy installation company based in St. Louis that has lost opportunities to expand into Empire's territory due to Empire's failure to observe the solar rebate and solar carve-out provisions of the RES. EXHIBIT 17, Responses to DRs 006, 012, 019.

8. Missouri Solar Applications, LLC, is a solar installation company based in Jefferson City that has lost business opportunities due to Empire's failure to observe the solar rebate and solar carve-out provisions of the RES. EXHIBIT 17, Responses to DRs 005, 013, 020,

021. Two of its employees participated in the campaign to pass Proposition C. EXHIBIT 17, Response to Empire's DR 030.

HYDROPOWER NAMEPLATE RATING

9. It is undisputed that Ameren Missouri is using its Keokuk hydroelectric generating station to comply with the RES, and that the facility is comprised of 15 generators each with individual nameplate ratings between 7.2 and 8.8 megawatts. 2011 Ameren Missouri RES Compliance Report, p. 9, Case No. EO-2013-0351.

10. It is undisputed that Empire is using its Ozark Beach hydroelectric facility for compliance, and that Ozark Beach is comprised of four generators of four MW each for a total of 16 MW. 2011 Empire RES Compliance Report, p. 5, Case No. EO-2012-0336.

11. The only other material issue that could be considered factual is whether the statutory phrase "nameplate rating" has any meaning other than the rating on a physical nameplate attached to an individual generator. The only other issue that could be considered factual is whether the statutory phrase "nameplate rating" has any meaning other than the rating on a physical nameplate attached to an individual generator. The filed testimony of Ed Holt on behalf of Complainants establishes that the terms "nameplate rating" and "nameplate capacity" are synonymous (Direct Testimony of Ed Holt at 8) and are commonly used by utilities to refer to the combined generating capacity of all the generating units at a facility. Id. at 8, 10, 12 (see also EXHIBIT 6, Ameren Corporate fact sheet giving capacity of Keokuk as 140 MW and of Osage Beach as 240 MW). The two phrases are used in the same sense by government agencies such as the Federal Energy Regulatory Commission ("FERC")(EXHIBITS 1–3, FERC Form 1 using "Total installed cap" and "Gen nameplate rating" synonymously) and the Energy Information Administration ("EIA")(EXHIBIT 4, EIA Annual Electric Generator Report

requesting "total generator nameplate capacity"); in the federal Public Utility Regulatory Policies Act ("PURPA")(EXHIBIT 5, "What is a qualifying facility?"); and by the North American Renewables Registry ("NAR")(EXHIBIT 9–10, NAR Operating Rules; and EXHIBIT 11, report listing all registered assets).

12. Both Ameren Missouri and Empire have publicly acknowledged that "nameplate rating" can mean the combined generating capacity of all generating units at a hydroelectric facility in their filings with FERC (Form 1) for the year 2012. Testimony of Ed Holt at 14-15. On line 5 at p. 406 of their 2012 FERC Form 1 filings, Ameren Missouri lists the total capacity of Keokuk as 127.2 MW, while Empire gives the 16 MW aggregate capacity of Ozark Beach when asked to provide the "total installed cap (Gen nameplate rating in MW)." EXHIBITS 2, 3.

13. It is undisputed that Ameren Missouri refers to the aggregate "nameplate generation" of Pioneer Prairie wind farm on pg. 6 its 2011 RES Compliance Report (EO-2012-0351).

14. It is undisputed that Empire refers to the "power plant ratings" of all its plants as the sum of all units in EXHIBIT 8, Empire Fast Facts. In EXHIBIT 7, the history page of its website, Empire states that Ozark Beach "supplies" 16 MW and that the Asbury plant's "capacity" is the sum of its two units' capacity. In EXHIBIT 12, Empire's 2009-2013 construction plans slide show, says that Ozark Beach "produces" 16 MW.

15. There is no genuine issue with regard to the fact that Empire, in its compliance filings, repeatedly uses "nameplate capacity" to refer to aggregate capacity, as in, "Empire's renewable energy nameplate capacity as of January 20, 2009 is 255 MW," referring to the two Kansas wind farms with which it has PPAs (see, e.g., 2011 Empire RES Compliance Report, pp. 14-15, Case No. EO-2012-0336).

PRE-COMPLIANCE ERA RECs

16. It is undisputed that Ameren Missouri attempted to retire RECs that were created prior to 2011 for compliance with the RES for 2011. 2011 Ameren Missouri RES Compliance Report, p. 13, Case No. EO-2012-0351).

17. It is undisputed that Empire attempted to retire RECs that were created prior to 2011 for compliance with the RES for 2011. 2011 Empire RES Compliance Report, p. 5, Case No. EO-2012-0336.

UNBUNDLED RECs

18. It is undisputed that Ameren Missouri relied on solar RECs ("SRECs") purchased from the Western Renewable Energy Generation Information System ("WREGIS") associated with power that was never sold to Missouri customers in claiming to meet the 2% "solar carve-out" of the RES. 2011 Ameren Missouri RES Compliance Report, p. 8, Case No. EO-2012-0351.

SOLAR EXEMPTION

19. It is undisputed that Empire failed to offer or pay solar rebates in 2011 and did not attempt to retire any solar RECs for compliance with the solar provisions of the RES for 2011, and that their claimed reasons for such non-compliance are the provisions of Section 393.1050, RSMo. 2011 Empire RES Compliance Report, pp. 14–15, Case No. EO-2012-0336.

20. There is no genuine issue that Section 393.1050, RSMo, as part of Senate Bill 1181 (2008), was enacted on May 16, 2008 with an effective date of August 28, 2008. Missouri Senate Journal for 2008, p. 1729; House Journal, p. 1992.

21. There is no genuine issue that the Secretary of State certified the ballot title for Proposition C on February 25, 2008. EXHIBIT 13.

22. There is no genuine issue with the fact that the signed petitions for Proposition C were received by the Secretary of State on May 4, 2008. EXHIBIT 14.

23. There is no dispute that the RES, or Proposition C, passed on November 4, 2008 and became effective on that date, which appears in the Revised Statutes of Missouri for §§ 393.1020–393.1035, RSMo.

24. It is undisputed that no Missouri investor-owned utility besides Empire has ever claimed to be exempt from the solar requirements of the RES or to have had by Jan. 20, 2009, an amount of eligible renewable energy technology nameplate capacity equal to 15% of their total owned fossil-fired generating capacity. 2011 Ameren Missouri RES Compliance Report, pp. 10–11, Case No. EO-2012-0351; 2011 KCPL RES Compliance Report, pp. 4, 5–6, 7, Case No. EO-2012-0348; 2011 GMO RES Compliance Report, pp. 4–5, 6, 7, 8, Case No. EO-2012-0349.

WHEREFORE, Renew Missouri respectfully requests that the Commission issue an Order granting summary determination in favor of Complainants in the above-styled case.

Respectfully submitted,

/s/ Andrew J. Linhares
Andrew J. Linhares, # 63973
910 E Broadway, Ste. 205
Columbia, MO 65201
(314) 471-9973 (T)
(314) 558-8450 (F)
andrew@renewmo.org

/s/ Henry Robertson
Henry Robertson, # 29502
705 Olive Street, Ste. 614
St. Louis, MO 63101-2208
(314) 231-4181 (T)
(314) 231-4184 (F)
hrobertson@greatriverslaw.org

ATTORNEYS FOR COMPLAINANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, together with the accompanying Memorandum and all referenced Exhibits, have been electronically mailed to all parties of record on this 23rd day of July, 2013.

/s/ Andrew J. Linhares
Andrew J. Linhares