

**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) File No. EA-2023-0286
for Certificates of Convenience and)
Necessity for Solar Facilities.)

MOTION FOR DETERMINATION ON THE PLEADINGS

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), and, pursuant to 20 CSR 4240-2.117(2), submits to the Missouri Public Service Commission ("Commission") this *Motion for Determination on the Pleadings* ("Motion"). In support of its position, the Company states as follows:

I. INTRODUCTION

1. On December 23, 2025, the Commission issued its *Order Suspending Tariff Sheet* in this matter, suspending the effective date of Ameren Missouri's proposed rate schedule for Phase III of its Renewable Solutions Program ("RSP") until December 31, 2025. This delay was intended to allow the Commission additional time to review the rate schedule, as well as to allow the Company and the Commission Staff ("Staff") to continue to try to resolve their differences regarding the applicability of 393.135.1 RSMo¹ to Renewable Energy Credit ("REC") purchases and retirements.

2. 20 CSR 4240-2.117(2) allows for a determination on the pleadings "whenever such disposition is not otherwise contrary to law or contrary to the public interest." This Commission rule is intended to "make litigation before the Commission more efficient and less costly for each entity and each person involved."² Ultimately, the facts in this matter are not in

¹ All statutory references are to the Revised Statutes of Missouri (Cum. Supp. 2025), unless otherwise indicated.

² Page 1, "In the Matter of the Proposed Rulemaking, 4 CSR 240-2.117, Summary Determination," Case No. AX-2002-159, *Order Finding Necessity for Rulemaking*, issued September 27, 2001.

dispute. It is strictly a matter of how to apply the law and the *Stipulation and Agreement*³ to the facts at hand. Accordingly, the Commission is free to make a determination on this matter based on the pleadings, and without additional testimony or hearing.

II. RELEVANT FACTS AND ARGUMENT

3. On November 12, 2025, Ameren Missouri submitted Tariff Sheet No. 83.8, Rider RSP to establish the rates RSP subscribers would pay to buy Renewable Energy Credits ("RECs") generated by the Phase III RSP resources, the Vandalia and Bowling Green solar facilities. Both facilities were fully subscribed⁴ even though, at the time of filing, neither the Vandalia nor the Bowling Green facility was yet fully operational and used for service. As Ameren Missouri explained in its December 17, 2025, *Status Report*, however, implementation of rates for RECs RSP resources will produce prior to the facilities becoming fully operational and used for service is the norm:

- The Phase I rate schedule took effect May 1, 2023 even though Boomtown did not go into service until December 19, 2024.⁵
- The Phase II rate schedule took effect September 29, 2024, even though the Cass County solar facility did not go into service until December 31, 2024.⁶

4. This was not an issue for Phase I or Phase II, and should not be an issue for Phase III, for a very simple reason: Ameren Missouri is not asking for rate recovery of any asset but instead is simply implementing another phase of the RSP. Stated another way, as with Phases I and II, the Phase III rate schedule is not based on "the costs of construction in progress upon any existing or new facility." This RSP filing does not involve rate recovery on any asset. It is

³ On March 21, 2024, the Commission approved the *Stipulation and Agreement* and ordered the parties to comply with its terms. See Item No. 113 in this matter.

⁴ See File No. EA-2023-0286, November 12, 2025, tariff filing and cover letter, Item No. 131.

⁵ See File No. EA-2022-0245 for Boomtown, Item No. 11, and Tariff Tracking Number YE-2023-0010 for Phase I tariffs.

⁶ See File No. EA-2023-0286 for Cass County, Item No. 120, and Tariff Tracking Number JE-2025-0020 for Phase II tariffs.

simply an implementation of a Phase of the RSP, precisely as the Commission intended when it approved the RSP in the first place in Phase I, and the expansion of the program in Phase II. And the Company will not ask for inclusion of these assets in rate base until the next rate case after they are placed in service. That is what Section 393.135 was specifically designed for and why we have successfully implemented tariff sheets implementing earlier RSP Phases before the underlying facilities were fully operational and used for service.

5. Section 393.135.1 states:

Except as provided in subsection 2 of this section, **any charge** made or demanded by an electrical corporation for service, or in connection therewith, **which is based on the costs of construction in progress** upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited. [Emphasis added.]

Ultimately, this is a matter of statutory interpretation, and the rules of statutory interpretation are simple. The primary rule of statutory interpretation is to give effect to the legislative intent as reflected in the plain language of the statute.⁷ Further, "...we must interpret statutes to avoid unreasonable, oppressive, or absurd results."⁸ Statutory interpretation should be reasonable and logical, not hyper-technical.⁹

6. Unfortunately, Staff's argument that 393.135.1 applies to the RSP Phase III tariff sheet is, on its face, at war with the plain language of the statute. The rates RSP subscribers will pay for RECs has nothing to do with the capital investment (i.e., the costs of construction work in progress) or either the Vandalia or Bowling Green facilities. Moreover, even if it could be successfully argued that the language of the statute is ambiguous, Staff's interpretation, if

⁷ *Parktown Imports, Inc. v. Audi of Am., Inc.* 278 S.W.3d 670, 672 (Mo. banc 2009).

⁸ *Townsend v. Jefferson Cnty. Sheriff's Dep't*, 602 S.W.3d 262, 265 (Mo.App. E.D. 2020).

⁹ *Ivie v. Smith*, 439 S.W.3d 189, 203 (Mo. banc 2014).

adopted, would result in a complete reversal of how the statute has previously been applied within the same program implementation. As previously noted, Ameren Missouri has already twice, for the first two phases of the RSP, sought approval of its tariff sheets well in advance of the associated facilities' in-service dates. Until now, Staff has not seen that has a problem. Until now, Staff has apparently seen the RSP tariff sheets for what they are – implementation of RSP Program Phases so RECs can be sold to subscribers and a charge based on the cost of construction in progress.

7. There is an even more telling way to show that Staff has historically agreed with us that rises above mere tacit approval – its own words in this case. First, there is the language negotiated by the parties in the March 5, 2024, *Stipulation and Agreement* approved by the Commission at found at Paragraph 5, sections i and j:¹⁰

- i. The in-service criteria contained in Confidential SEL-r2 to Staff witness Shawn Lange's rebuttal testimony shall be used in the future rate case ***where a project proposed in this docket is considered for inclusion in rate base*** to determine whether the project is in-service.
- j. Reporting for any of the projects that are ultimately determined to be resources to be used for a future Renewable Solutions Program phase shall be as ordered by the Commission's *Report and Order* in File No. EA-2022-0245. The Company shall notify Staff via a notice filed in this docket within seven (7) days after a decision to utilize such a project for the Renewable Solutions Program.

[Emphasis added.]

If Staff had believed that Section 393.135.1 applied prior to the point in time that an RSP facility was to be included in rate base (i.e., a rate case), then the in-service criteria would have had to apply to both the rate case aspect *and* the RSP rate schedule that set the price of the RECs.

¹⁰ File No. EA-2023-0286, *Order Approving Stipulation and Agreement and Granting Certificates of Convenience and Necessity*, p. 4, issued March 21, 2024, EFIS Item No. 113.

8. In order to determine whether this was an oversight in drafting, Ameren Missouri examined the rebuttal testimonies of Staff witnesses Shawn Lange, who addressed the in-service criteria, and Cedric Cunigan, who addressed the RSP, which were submitted in this case on October 11, 2023. Mr. Cunigan at no time addresses or suggests the application of in-service criteria to the implementation of the RSP. Mr. Lange, at page 28, lines 4 – 8 of his testimony, specifically states:

...For any CCN granted in this case, Staff recommends that the Commission note the in-service criteria contained in Confidential Schedule SEL-r2 and Confidential Schedule SEL-r3 are appropriate for use in a future case to determine whether each solar project is in service. **Staff prefers to have in-service criteria that the parties can agree to prior to the case(s) in which the plant is put into rate base....**" [Emphasis added.]¹¹

9. Before now, Staff has not in any way claimed that Section 393.135.1 applied to an RSP rate schedule. Instead, Staff has negotiated a settlement agreement specifying the application of the in-service criteria to an asset being offered for inclusion in rate base. And Staff has raised no objection to two prior RSP Phase implementations on facts that are the same as the facts today: the RSP rate schedule was filed with the intent of becoming effective prior to the underlying resource reaching operational status.

10. Further, Staff's sudden reliance on terms of art contained in the RSP rate schedules - "RE Service," and "resource" – to bolster the argument that it implies "cost base" [sic] charges is simply unfounded. The price of an REC is based on supply and demand in the market and has nothing to do with the cost to construct the asset. Additionally, since this language has appeared in the RSP rate schedule for all three phases, the Company has to ask again why it only now poses this issue for Staff. Staff's argument that because an REC is based on the generation

¹¹ See also File No. EA-2023-0286, *Stipulation and Agreement*, p. 3, paragraph 5(c), filed March 5, 2024, EFIS Item No. 112, that resolved this case, requiring Ameren Missouri to file direct testimony in "future rate cases where such a project is initially proposed to be included in rate base ... [that show] "satisfaction of the in-service criteria..."

of electricity and therefore is cost-based is similarly flawed because again – RECs are priced based on the market. It has no relationship whatsoever to the cost to construct the source facility regardless of what words you may try to give alternate meanings.

11. The RSP is simply a program that allows interested customers to subscribe in order to receive the RECs created by the resource's output. As the Commission has previously acknowledged, RSP program participants will still be subject to all of the charges associated with base rates.¹² Obviously, Ameren Missouri will not ask for inclusion in rate base (i.e., will not ask to set rates based on the construction cost of the assets in question) until the next rate case after these facilities become fully operational and used for service. Just as it agreed to in the *Stipulation and Agreement* that resolved this case.

12. For now, however, Ameren Missouri simply wants to get this tariff over the finish line so its subscribers can begin purchasing RECs and its other customers can begin enjoying the associated benefits. The Commission has previously noted the benefits of the RSP, in File No. EA-2022-0245, when it found:

The Commission finds the RSP will lower the NPVRR associated with the Project because the Project's cost is being subsidized by the RSP subscribers. Additionally, the RSP will make Missouri more competitive in attracting and retaining businesses or business expansions, which in turn generates jobs, taxes, other economic benefits and allows the Company to spread its fixed costs over more sales, to the benefit of all customers. This competitive advantage is supported regardless of the location of the renewable facility at issue – as evidenced by the robust subscriptions already in hand from subscribing customers who sought even more MW of renewable capacity than the Project makes available.¹³

It should also be noted that the RSP benefits more than subscribing customers – it enhances overall customer affordability. All of the revenues received from subscribing customers in

¹² See File No. EA-2022-0245, *Report and Order*, issued April 12, 2023, p. 20, paragraph 54, EFIS Item No. 150.

¹³ See, *Id.* at pp. 33-34.

payment for the RECs are tracked, recorded to a regulatory liability, and then used to reduce revenue requirements, and accordingly all customer rates, in Ameren Missouri's rate cases.¹⁴

WHEREFORE, for the reasons stated above, Ameren Missouri requests that the Commission issue a determination on the pleadings in this matter, finding that the submitted tariff is appropriate and should be allowed to go into effect no later than February 15, 2026.

Respectfully submitted,

/s/ Paula N. Johnson

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¹⁴ See, e.g., File No. ER-2024-0319, Direct Testimony of Steven M. Wills (EFIS Item No. 10) at p. 11. See also File No. ER-2024-0319, *Stipulation and Agreement* (EFIS Item No. 109) at Paragraph 7.h.

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing was served on counsel for all parties of record in this case on via electronic mail (e-mail) on this 15th day of January, 2026.

/s/ Paula N. Johnson
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