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 Certificates of Public Convenience and Necessity Authorizing it to Construct Renewable Generation Facilities	))))))	**Case No. EA-2023-0286** Tracking No. JE-2026-0068

STAFF'S RESPONSE TO AMEREN MISSOURI'S MOTION FOR DETERMINATION ON THE PLEADINGS/ STAFF'S CROSS MOTION FOR DETERMINATION ON THE PLEADINGS

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and makes the following response to Ameren Missouri's Motion for Determination on the Pleadings: Ameren Missouri's Motion should be denied. Staff moves that the Commission, instead, to grant summary determination on the pleadings to Staff and reject the Tariff with Tracking Number JE-2026-0068:

I. Summary of Ameren Missouri's Motion

1. Ameren Missouri asks the Missouri Public Service Commission to resolve this matter on the pleadings, asserting that no material facts are in dispute and that only a question of statutory interpretation remains.

2. Ameren explains that it filed Tariff Sheet with Tracking Number JE-2026-0068 to establish prices for Renewable Energy Credits ("RECs") under Phase III of its Renewable Solutions Program ("RSP"), using the Vandalia and Bowling Green solar facilities as resources. Although Bowling Green is not yet fully operational and used for service, Ameren contends that the tariff may lawfully apply to Bowling Green because the tariff does not recover construction or asset costs,

REC prices are market-based rather than cost-based, and Ameren will not seek inclusion of Bowling Green in rate base until a future general rate case.

3. Ameren further argues that Staff's position conflicts with prior Commission-approved stipulations, Staff testimony, and historical implementation of earlier RSP phases, and emphasizes that the RSP benefits both subscribing and non-subscribing customers by reducing revenue requirements and improving customer affordability.

II. The Material Facts Are Not in Dispute

4. Staff agrees that the following material facts are not in dispute:

- Vandalia is fully operational and used for service.
- Bowling Green is not fully operational and used for service.
- The tariff applies collectively **to both facilities**.
- Ameren Missouri's tariff authorizes the charging of rates before Bowling Green is fully operational and used for service.

Accordingly, the case presents a pure question of law: May the Commission approve a tariff that authorizes charges associated with Bowling Green even though Bowling Green is not in service and no renewable energy is being generated?

III. As a Matter of Law, RECs Cannot Exist Without Actual Energy Generation

5. Missouri law defines a Renewable Energy Credit as "a tradeable certificate of proof that one megawatt-hour of electricity **has been generated** from renewable energy resources." § 393.1025(4), RSMo. (emphasis added). Commission Rule 20 CSR 4240-20.100(1)(M) mirrors this definition. The verb phrase "has been generated" is in the "present perfect" tense, constructed from the past perfect "generated" plus "has been,"

i.e., the act has been completed as of the present moment. A REC, therefore, cannot exist unless electricity has already been generated. A tariff that authorizes charges for RECs associated with a facility that is not generating electricity necessarily authorizes charges for a product that does not yet exist.

Ameren's assertion that REC prices are "market-based" does not alter this statutory prerequisite. Whether market-based or cost-based, a REC must, in the first instance, represent completed energy generation to be an REC. The Commission Staff's role in this case is in large part to advise the Commission on the law. Ameren Missouri's position in this case seeks to place Staff at odds with its duty to the Commission. At bottom, Ameren Missouri is telling the Commission that the Commission is free to ignore the clear, unambiguous statutory definition of a REC. Consistent with Staff's mandate, Staff cannot advise the Commission to accept Ameren's Missouri's definition of a REC and thereby simply outright ignore the statutory definition.

IV. The Tariff Facially Authorizes Charges Associated with a Non-Operational Facility

6. The Company contends that the tariff should be approved because it applies to RECs and they are "market based," not "cost based." Staff responds that the Tariff Sheet is styled as a "Renewable Solutions Rate Schedule – Program Phase No. 3." It applies to "Renewable Energy Service" and refers to "resources." It does not define the product sold as RECs only, does not restrict billing to RECs already generated, and does not limit applicability to in-service facilities. Staff responds, further, that Commission Rule 20 CSR 4240-20.100(1)(N) defines "renewable energy resources" as "electric energy, **produced.** . ." (emphasis added) from renewable sources."

Again, looking at the grammar: “Produced” is an adjective based on the past participle of the verb “to produce.” Exactly as with “generate” in the verb phrase “has been generated,” “produced” means that the thing *has happened*. A renewable resource, therefore, does not exist until production has actually occurred.

The touchstone of the inquiry here is what the tariff actually states. On its face, the tariff authorizes charges associated with Bowling Green even though Bowling Green has not (and is not) yet producing electricity. Unquestionably—it is so stipulated—the Company wishes to start collecting rates now on a facility that is not producing energy resources now. If we are to understand that the REC is exactly what the statute says that it is—not something else, i.e., a tradable certificate that energy “has been generated,” but also to understand that no facility is in operation to generate it, then this is precisely the type of charge that Section 393.135.1 prohibits: a charge “for service, or in connection therewith” associated with property before it is fully operational and used for service. The Company’s apparent position that the charge may be allowed precisely for the reason that the certificate is not really what it pretends to be—cost based—should be rejected as too clever by half.

VI. Tariffs Must Be Enforced As Written

7. Commission-approved tariffs have the force and effect of statutes. They must be interpreted according to their plain language.[1] A tariff’s having statutory dignity and effect, the Commission may not amend it based on extrinsic explanations of how Ameren claims it intends to administer the tariff.[2] The tariff contains:

[1] See, generally, *Doe v. Tidball*, 625 S.W.3d 459 (Mo. Banc 2021); *Doe v. St. Louis Community College*, 526 S.W.3d 329 (Mo. App. E.D., 2017); *Abduhamed v. Carol House Furniture, Inc.*, 711 S.W.3d 427 (Mo. App. E.D. 2025)
[2] *Doe v. Tidball*, 625 S.W.3d 459 (Mo. Banc 2021).

- No REC-only limitation
- No restriction to in-service facilities
- No conditioning language tied to production

Ameren's assurances cannot supply language that does not appear in the tariff.

VII. Prior RSP Phases Do Not Control

8. The Company apparently is arguing that its tariff was tendered in reliance on past Commission practice. Staff responds, first, that the Company offers no argument that the Commission's past practice has prejudiced it in this case. In any event, earlier RSP phases do not override statutory requirements. Again reminding the Commission of Staff's mandate in this case, the Staff cannot advise the Commission that past Commission practice can authorize what the statute prohibits. Looking past that point, however, earlier phases involved circumstances where facilities were not yet subscribed and tariffs were needed for prospective customers. Here, Phase III is fully subscribed. That distinction eliminates dispositively the rationale that past Commission practice somehow allows the Commission to amend a state statute and allow a tariff to become effective before statutory charging conditions exist.

VIII. Conclusion

9. In summary: Staff agrees that the facts are undisputed and that the case presents a question solely of law: because Bowling Green is not in service, Missouri law does not permit approval of a tariff that authorizes charges associated with that facility. RECs cannot exist without actual generation, and the tariff—read as written—facially authorizes prohibited charges tied to a non-operational resource, regardless of Ameren's "market-based" characterization or past RSP practice.

Shorn of all the legal arguments, Ameren Missouri's position is that it should be allowed to charge rates before the law allows because it wants to, its customers want it to, and no one will be hurt. No harm, no foul. Staff answers that Staff will not advise the Commission to allow the sale of an REC that claims to be what it is not—proof that renewable energy "has been produced." The Commission should deny Ameren Missouri's Motion for Determination on the Pleadings

10. The Commission should enter an order summarily determining that the tariff with Tracking Number JE-2026-0068 be rejected.

11. Staff advises the Commission that after due investigation it has concluded that the Vandalia facility is now fully operational in compliance with the statute. Staff suggests that the Commission reject the tariff with Tracking Number JE-2026-0068 covering both Vandalia and Bowling Green and order Ameren Missouri to file a substitute tariff covering only the Vandalia facility. It is suggested that Ameren Missouri be ordered to file a tariff that changes the title of MO PSC Schedule 6 Original Sheet 83.8 from "RENEWABLE SOLUTIONS RATE SCHEDULE – PROGRAM PHASE NO. 3" to "RENEWABLE SOLUTIONS RATE SCHEDULE – PROGRAM PHASE NO. 3 – Vandalia Renewable Energy Center."

WHEREFORE, for the foregoing reasons, Staff prays the Commission's Order denying Ameren Missouri's Motion for Determination on the Pleadings and the Commission's Order granting Staff's Cross Motion for Judgment on the Pleadings with its specific order that the tariff with Tracking Number JE-2026-0068 be rejected. Staff prays for such other and further orders as the Commission deems proper.

Respectfully submitted,

/s/ Paul T. Graham

Senior Counsel Missouri Bar No. 30416
P. O. Box 360 Jefferson City, MO 65102
(573) 522-8459 (Telephone)
(573) 751-9285 (Fax)
Paul.graham@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

The undersigned certifies by his signature below that on January 26, 2026 he filed the above captioned pleading in the EFIS file of the Missouri Public Service Commission.

/s/ Paul T. Graham