BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re: Union Electric Company's	)	
2011 Utility Resource Filing pursuant to	)	File No. EO-2011-0271
4 CSR 240 – Chapter 22.	)	

INITIAL POST-HEARING BRIEF OF AMEREN MISSOURI

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I. Introduction

Ameren Missouri submitted its Integrated Resource Plan (IRP) filing on February 23, 2011. Since then, there have been several rounds of comments or testimony and a two day hearing held in December of 2011. The record in this case is voluminous. Before attempting to make sense of the often conflicting claims of the parties, the Missouri Public Service Commission (Commission) should start with what the IRP rules indicate that the Commission is to determine in this case. The rules indicate that the Commission's job in this case is to determine whether Ameren Missouri's IRP filing "does or does not demonstrate compliance with the requirements of this [IRP] chapter, and that the utility's resource acquisition strategy either does or does not meet the requirements stated in 4 CSR 240-22.010(2)(A)-(C)."[1] Under the rules, the role of the Commission is not to make its own determination about which input is, in its view, the "best" or the "most accurate," and the Commission is not to make its own determination about whether, if it were managing the utility, it would have selected the same twenty year resource strategy. Other parties advocate a role for the Commission not found in the rules by urging the Commission to take actions the rules do not contemplate. In summary, the Commission's job in an IRP case is to determine if the Company undertook the steps in the planning process that are required by the IRP rules, a fact the Commission

[1] 4 CSR 240-22.080(13). All rule references, unless otherwise noted, are to the IRP rules in effect prior to June 30, 2011.

itself acknowledged in the Company's previous IRP case, "The purpose of the IRP filing is to demonstrate that Ameren Missouri has engaged in a planning process that complies with the requirements of the rule."[2]

II. Legal and Practical Restrictions

There are many reasons the Commission's rules contemplate that it do no more than ensure the Company undertook a robust planning process. From a legal perspective, the Commission cannot make decisions for the Company. That is left to the management of the utility, as the Missouri Supreme Court has long recognized::

> But it must be kept in mind that the commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business. The company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public. The customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service.[3]

The courts have continued to recognize the limits on the Commission's authority in this regard:

> The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. These powers do not, however, clothe the Commission with the general power of management incident to ownership.[4]

It is only when an electric utility seeks to put the capital and expenses arising from its resource decision(s) into rates that the Commission considers the issue of whether or not a particular resource decision was prudent. "[T]he Commission's authority to regulate does

[2] Re Union Electric Company, Case No. EO-2007-0409, Final Order (February 19, 2009), p. 1.
[3] St. Joseph v Public Service Commission, 30 S.W.2d 8, 14 (Mo. 1930).
[4] *State ex rel Public Service Commission v. Bonacker*, 906 S.W. 2d 896, 900 (Mo. Ct. App. S.D. 1995).

not include the right to dictate the manner in which the company shall conduct its business."[5]

The Commission, over the years, has consistently adhered to this principal. When the IRP rules were initially adopted, the Commission noted that it was, "…wary of assuming, either directly or in a de facto fashion, the management prerogatives and responsibilities associated with strategic decision making, preferring to allow utility management the flexibility to make both overall strategic planning decisions and more routine management decisions in a relatively unencumbered framework."[6] At that time, the Commission also noted that the IRP rules are not designed to "dictate either the strategic decision itself or the decision-making process."[7]

Aside from legal considerations, from a practical standpoint it also doesn't make sense for the Commission to undertake a process of sorting through and choosing between the differing viewpoints about which input or plan is "best" or is the "right one" which have been expressed in this case. Planning is a continuous effort at Ameren Missouri, as it must be at all utilities. Data collection, analysis and resource planning do not end on the day an IRP filing is made at the Commission. The Commission IRP rules recognize this fact by requiring a utility to submit a new IRP filing every three years and (under the new IRP rules) to provide an annual update. The filing at issue in this case was made a year ago and represents the Company's plan at that point in time. Things change. Environmental rules are proposed or suspended, natural gas prices fluctuate and electric demand changes. In fact, all of these examples have occurred just since the Company

[5] *Bonacker*, 906 S.W.2d at 899 *quoting* State ex rel Kansas City Transit, Inc. v. Public Service Commission, 406 S.W.2d 5, 11 (Mo. 1966).
[6] *Order of Rulemaking*, Docket No. EX-92-299, December 8, 1992.
[7] *Id.*

submitted the IRP filing in this case. The Commission must remember that the IRP filing took over a year to complete. That means some of the inputs were chosen in mid-2009. A change in an initial input that occurred in December of 2010 couldn't be incorporated into the filing without redoing all of the analysis and delaying the filing date. At that point, there would be other updates to make. The bottom line is that an IRP filing represents, and has to represent, the utility's planning process at a snapshot in time. All the Commission can practically do is to examine the IRP filing to ensure the planning *process* of the utility is compliant with the Commission's rules.

III. Ameren Missouri's Filing Complies with the Commission's IRP Rules

The fundamental question the Commission must answer in making its determination in this case is this: Did Ameren Missouri comply with the requirements of the Commission's rules? For example, did the Company calculate "Total Resource Cost" values using the methodology set forth in 4 CSR 240-22.050(7)(D)? If the Company completed that calculation using the correct methodology, it has complied, even if another party would have used a different value for some portion of that calculation.

Ameren Missouri's filing complies with the requirements found within the Commission's IRP rules. In all of the feedback the Commission has received on Ameren Missouri's IRP, there were no allegations that the Company failed to undertake some required analysis.[8] Rather, the deficiencies alleged consist of assertions that the Company used incorrect values in its IRP analysis (such as pointing out that the forecast for natural gas prices fell dramatically in early 2011). These types of claims are not relevant to whether the Company's filing is in compliance with the requirements of the IRP rules. Accordingly, while they may provide important feedback for the Company to

[8] The Office of the Public Counsel made one inaccurate assertion that the Company did not undertake analysis of probable environmental costs.

consider as it continues to engage in its ongoing planning process, they do not reflect a valid basis to find this filing non-compliant. Beyond these differences related to inputs others might prefer versus those used by the Company, there are two areas of disagreement are addressed in this initial post-hearing brief. Those are the appropriate role and consideration of Present Value of Revenue Requirement (PVRR) and the difference between Selection Criteria and Decision Factors.

A. PVRR

PVRR is the revenue requirement, on a present value basis, for any 20 year plan. The dispute over PVRR in this case is rooted in the IRP rules at 4 CSR 240-22.010(2). Part (B) of this portion of the rule requires the Company to "Use minimization of the present worth of long-run utility costs [another phrase meaning PVRR] as the primary selection criterion in choosing the preferred resource plan."[9] This is the section relied upon by OPC and Staff (and others) when arguing that Ameren Missouri did not use appropriate selection criteria. This allegation is untrue. The Company did use PVRR as its "primary selection criterion." The Company identified five selection criteria for purposes of choosing its preferred resource plan – PVRR; Economic Development; Customer Satisfaction; Financial and Resource Diversity. PVRR was weighted at 30%, Economic Development was weighted at 10% and the remaining factors were weighted at 20% each. The Commission's IRP rules do not define the word "primary." However, the plain and ordinary meaning of that term is "of first importance."[10] The definitions placed in the record by Staff, from Ameren Missouri's comments in the Commission's original (1992) IRP rulemaking, defines "primary":

[9] 4 CSR 240-22.010(2)(B).
[10] Tr. p. 149, l. 6-9.

1 a: first in order of time or development: ·PRIMITIVE
2 a: of first rank, importance, or value: PRINCIPAL
2 b: BASIC, FUNDAMENTAL
3 c: preparatory to something else in a continuing process.[11]

As Ameren Missouri witness Matthew Michels explained, these definitions are consistent with the way the Company interpreted "primary" in its IRP filing.[12] They are the only definitions of "primary" provided in this case.

Nonetheless, other parties argue that "primary" means that PVRR must be given a weight greater than was assigned by the Company. Staff's evolving position on this subject ended with Staff witness John Rogers arguing that because minimizing PVRR is "the" objective of resource planning, PVRR should be given a "very high weight."[13] Aside from the fact that Mr. Rogers' argument reflects nothing more than his very subjective judgment of what a "very high" weight is, this interpretation must be rejected because it is simply not provided for by the rules. Administrative rules are to be interpreted like a statute. The word "primary" is not ambiguous and, consequently, it must be given its plain and ordinary meaning.

Moreover, the subjective interpretation urged by others would render several other provisions of the IRP rules meaningless. Specifically, it would make meaningless the identification of any other planning objectives pursuant to 4 CSR 240-22.060(1), which provides that, "The utility may identify additional planning objectives that alternative resource plans will be designed to serve." It would remove any meaning from 4 CSR 240-22.070(1)(A), which requires that the preferred plan, "In the judgment of utility decision-makers… strike an appropriate balance between the various planning

[11] Ex. 9, p. 28. (Case No. EX-92-299, Initial Comments of UE.)
[12] With the exception of the third definition, which would not be applicable to this situation. Tr. p. 243, l. 13-25.
[13] Ex. 16, p. 12, l. 10 (Rebuttal Testimony of John Rogers.)

objectives specified in 4 CSR 240-22.010(2)." It would also render the provisions of 4 CSR 22.070(11)(F) irrelevant. This section of the rules provides for the establishment of relative weights on performance measures as part of the process used to select the preferred plan. In addition to rendering certain rule provisions meaningless, this would effectively be a large step away from the planning rules as a framework for transparent utility resource planning and toward the establishment of resource planning by rote formula. This would also be a violation of the legal principals discussed above, specifically of the sole right of utility management to make management decisions for the utility.

OPC argues that PVRR must be given a weight of at least 50%.[14] Of course, the language of the IRP rules does not contain a 50% weighting requirement nor does OPC offer a definition of "primary" which supports its position. This is true of both the rules under which Ameren Missouri filed its 2011 IRP and the revised rules adopted by the Commission in 2011.

Before addressing the specifics of this argument, it is incumbent for the Commission to acknowledge the fact that no matter what weight is assigned to PVRR, it cannot trump other legal constraints which prevent the Commission from requiring a utility to lose money or invest in a manner that prevents it from recovering its costs. PVRR, and all other considerations, are subordinate to these over-arching legal constraints.[15]

Turning to the specific arguments set forth by other parties, all appear to miss the point that even if the Company had applied their definitions of "primary" (whether 100%

[14] Ex. 48, p. 11, l. 12-13. (Rebuttal Testimony of Ryan Kind.)
[15] Ex. 3, p. 13, l. 1-6. (Revised Surrebuttal Testimony of Warren Wood.)

or 50% weighting) the preferred plan chosen at this point in the analysis would not have changed. After applying the Selection Criteria, using the weighting assigned by Ameren Missouri management, the Realistic Achievable Potential (RAP) demand-side management (DSM) plan came out as one of the most attractive options which also exhibited the lowest overall PVRR. Changing the weighting of PVRR from 30% to 50% (or higher) would not have changed that outcome. The weighting chosen by Ameren Missouri did not prevent the RAP DSM plan from emerging as an attractive option at this point in the IRP process. The difference is the application of "other considerations," found at 4 CSR 240-22.010(2)(C), which is discussed below.

There is one last point to be made on the appropriate weighting for PVRR. The rules do not allow the Commission to assign a specific percentage as "the" correct percentage to be applied to PVRR Selection Criteria, nor would it be wise for the Commission to do so, even if the rules allowed it. The appropriate percentage may change, depending on circumstances facing a particular utility at a particular time, and it may also vary from utility to utility. The rules should not be applied in a manner that would eliminate this necessary flexibility. By using the word primary, the Commission has given guidance regarding the importance of this particular Selection Criterion, and it should not go further. This may mean that the parties will have to evaluate and determine if the weighting applied in each case is correct, but it is better to have that discussion than have a percentage set solely for reviewer's' convenience and without regard to the impact of that edict on the utility's planning process and decisions.

B. Other Considerations

4 CSR 240-22.010(2)(C) codifies the next step in the required IRP analysis. This section provides that the Company should "Explicitly identify…any other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs." The policy objective as set forth in 4 CSR 240-22.010(2) says "The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates . . . in a manner that serves the public interest . . . ."

Ameren Missouri identified three "other considerations" which the Company's IRP filing labeled "Decision Factors." Those other considerations were Large Plant Financing, Plant Retirement/Environmental and DSM Cost Recovery. The first of these, Large Plant Financing, is easy to understand. Presume for a moment that the plan that came in first after the selection criteria were applied included the construction of a second nuclear plant, with Ameren Missouri owning 100% of the plant. If financing 100% of the construction of a second nuclear plant would bankrupt the Company or damage the Company's access to credit, then this Decision Factor would constrain the Selection Criteria result and the Company would ultimately choose another preferred plan.[16] When Staff witness John Rogers was questioned about this example on the witness stand, he agreed that Ameren Missouri would not be required to adopt a Preferred Plan that would be financially harmful to the Company, admitting that there are constraints which would cause a utility to pick a Preferred Plan without the absolute lowest PVRR.[17]

[16] Tr. p. 279, l. 1-11.
[17] Tr. p. 279, l. 12-15.

The Decision Factor for DSM Cost Recovery is precisely the same. The Company's analysis showed that the current regulatory framework under which the Company operates causes it to lose tens of millions of dollars when it invests in successful energy efficiency programs,[18] because of something known as the throughput disincentive. No party in this case disputes the existence of the throughput disincentive. It represents a very real loss to the Company and cannot be ignored. The IRP objective does not require the Company to provide the cheapest possible electric service without regard to the financial health of the utility or other critical considerations. It requires "energy services that are safe, reliable and efficient, at just and reasonable rates . . . in a manner that serves the public interest . . . ." Ameren Missouri management sought a balance as it proceeded through the IRP process. As Mr. Wood testified, "[T]he public interest is a balancing principle between customers expecting safe and adequate service and the utility having access to just and reasonable rates including [the] opportunity to earn a reasonable return on its investments."[19] Choosing a Preferred Plan with RAP DSM without first remedying the associated regulatory treatment would not achieve such a balance, and so Company management was constrained from choosing that option, just it would be constrained from building a second nuclear unit if doing so would harm the Company financially. For these reasons, Company management chose the plan with Low Risk DSM as its Preferred Plan. This was a choice entirely consistent with the Commission's IRP rules and completely within Company management's discretion.

[18] Tr. p. 42, l. 15 through p. 55, l. 6.
[19] Tr. p. 61, l. 13-17.

IV. Summary

As the Commission stated in the Company's previous IRP case, "The IRP rules require investor-owned utilities, such as Ameren Missouri, to engage in a resource planning process that considers all options, including demand side efficiency and energy management measures, to provide safe, reliable, and efficient electric service to the public at reasonable rates, in a manner that serves the public interest."[20] This is exactly what Ameren Missouri has done and exactly what the Commission should find Ameren Missouri has done in its 2011 IRP filing.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

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[20] *Re Union Electric Company*, Case No. EO-2007-0409, Final Order (February 19, 2009), p. 1.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served on all parties of record via electronic mail (e-mail) on this 20th day of January, 2012.

/s/ Wendy K. Tatro
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