BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY BRIEF OF NRDC, SIERRA CLUB, RENEW MISSOURI, MID-MISSOURI PEACEWORKS, and GREAT RIVERS ENVIRONMENTAL LAW CENTER

In their initial brief, the Natural Resources Defense Council, Sierra Club, Renew Missouri, Mid-Missouri Peaceworks, and Great Rivers Environmental Law Center (collectively, "NRDC") identified a series of fundamental flaws that render Ameren's Integrated Resource Plan ("IRP") wholly invalid. The impact of these flaws on Ameren's ratepayers is significant, as the company's preferred resource plan would cost ratepayers an additional $2.1 billion by failing to pursue cost-effective demand side management ("DSM"). In addition, Ameren's failure to reasonably estimate the costs facing its aging coal-fired generation, compare such costs on an equal basis with DSM, or use up-to-date natural gas price projections raises the likelihood that the company will pursue retrofitting its coal units at a cost of $1.7 to $3.5 billion even though it would be better for ratepayers if at least some of those units were retired and replaced.

In its initial brief, Ameren does not make a serious attempt to demonstrate that it has somehow complied with the IRP rules. Instead, the company attempts to read those rules out of existence. NRDC respectfully requests that the Commission reject Ameren's attempt to undermine the IRP process and help avoid excessive impacts to ratepayers by declaring Ameren's IRP invalid and ordering the company to submit an IRP that follows the Chapter 22 IRP Rules.

I. Requiring an Integrated Planning Process Consistent With the Chapter 22 Rules Does Not Involve the Commission Taking Over Management of Ameren.

Ameren first attempts to read the Chapter 22 IRP rules out of existence by contending that any sort of meaningful enforcement of those rules would somehow equate to the Commission taking over management of the company. (Ameren Initial Br. at 3–4). Such argument implies that resource planning is a meaningless exercise because the company is free to choose a plan in disregard of the rule. The argument also demonstrates that Ameren does not seem to understand its role as a public, regulated utility.

While the Commission certainly does not have the power to take over the general management of a utility, that prohibition is only implicated in matters of "purely management prerogative." State ex rel. Kansas City Transit v. PSC, 406 S.W.2d 5, 11 (Mo. banc 1966). For example, the Commission cannot determine whether a utility should pay a dividend or whom the utility should appoint as president or counsel, *id*.; and the Commission cannot act as a receiver for a utility. State ex rel. PSC v. Bonacker, 906 S.W.2d 896, 900 (Mo.App. SD 1995). By contrast, where a utility action "could affect the public's rights," Missouri courts are clear that the Commission may take actions that would impact the management of the utility. State ex rel. Laclede Gas Co. v. PSC, 600 S.W.2d 222, 228 (Mo.App. WD 1980); *see also* State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo.App. ED 1980) ("The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest."). So, for example, the Missouri Supreme Court held in Kansas City Transit that the Commission's authority "would include the right to say, as the Commission did here, that Transit may not reduce its capitalization by distributing unearned surplus to stockholders without Commission approval." 406 S.W.2d at 10. In doing so, the Court noted that the Commission has not only the specific powers set forth in public utility statutes, but

also, in § 386.040, "all powers necessary or proper to enable it to carry out fully and effectually all the purposes of" those statutes.

In contrast to the extreme hands-off position taken by Ameren, the Commission's role is to strike "a continued balance between preserving the existence and integrity of the utility so it might continue service to the users, and protection to the users and ultimate ratepayers against unwarranted costs for utility service." Laclede Gas Co., 600 S.W.2d at 228. This protection against unwarranted costs is at the heart of the IRP rules. Ameren's management is not free to defy the rules and select a plan that is unduly costly and that neglects to plan for foreseeable contingencies like rising fuel and capital costs and new environmental regulations. Instead, the Commission has the power to direct Ameren to select a plan that will avoid unnecessary future costs. A preferred plan that is primarily demand-side, pending the outcome of MEEIA proceedings, is not ruinous to the company and is beneficial to the public. It is the Commission's duty to protect the interests of ratepayers by ensuring that Ameren is not allowed to simply trample those interests in the name of benefitting its shareholders.

II. Ameren's Attempt to Distinguish Between Review of the Process and of the Inputs Used During the IRP Process is Unfounded.

Ameren next attempts to set Chapter 22 at naught by arguing that the Commission must only determine whether the company followed the IRP "process," while ignoring any demonstration that the inputs used during that process were unreasonable. (Ameren Br. at 5–6). Ameren further contends that none of the parties in this proceeding alleged "that the Company failed to undertake some required analysis." (*Id.* at 5). These arguments, however, are unavailing.

Ameren's claim to the contrary notwithstanding, the parties have demonstrated that the company failed to undertake a number of critical analyses during the IRP process. For example,

Ameren did not evaluate "demand side resources on a logically consistent and economically equivalent basis" with investment in existing supply-side resources (NRDC Initial Br. at 3–5). In addition, Ameren never evaluated the cost-effectiveness of retrofitting, instead of retiring and replacing, the generation units at the Labadie and Rush Island plants even though those plants face between $1.7 and $2.4 billion in environmental retrofits over the next few years. (*Id*. at 14). With regard to both of these flaws, the problem is not simply that NRDC disagrees with Ameren regarding an assumption used in an analysis. Instead, it is that Ameren did not even do the required analysis to begin with.

More fundamentally, the line that Ameren attempts to draw between the IRP process and the inputs used in that process fails because a determination of whether the Chapter 22 IRP rules were complied with requires an evaluation of whether the inputs used in the IRP were within some range of reasonableness. Otherwise, a utility could easily render a portion or all of the IRP rules meaningless by using unreasonable inputs. For example, the Chapter 22 IRP rules require an evaluation of DSM. If the inputs used by a utility were unreviewable, then nothing would stop the utility from effectively ignoring that requirement simply by using an outlandish assumption regarding the cost of DSM in order to eliminate DSM from the mix of resources that would be included in the preferred resource plan. In such a situation, the utility would have technically completed the IRP "process," but the type of meaningful evaluation of DSM required by the Chapter 22 rules would not have occurred. Therefore, the Commission should reject Ameren's argument that all the company had to do was to check off the boxes of an IRP process Instead, NRDC urges the Commission to ensure that the evaluation carried out by Ameren was based on the type of reasonable inputs that are necessary for a meaningful IRP to have occurred.

III. The Commission Should Remedy Ameren's Invalid IRP By Requiring the Company to Produce a New IRP Now, Rather than Waiting For Future Filings.

This IRP comes at a critical time for Ameren, as the utility is facing the decision in the next year or two as to whether to install billions of dollars of pollution controls on its existing coal units or to retire and replace those units. Retirement and replacement of at least some of those units with DSM, renewable energy, and natural gas combined cycle power generation would almost certainly be a better deal for ratepayers. Yet Ameren failed to properly evaluate the costs facing its coal units, selected a DSM plan that is far from what is achievable, and used outdated natural gas prices that even the company acknowledges are higher than appropriate. As a result, Ameren is on track towards implementing a resource plan that would be far more expensive for its ratepayers than would one that pursued more DSM, used reasonable natural gas price projections, and fully evaluated the costs facing the company's coal fleet.

Ameren's need, due to deadlines set in federal environmental regulations, to decide soon whether to retrofit or retire various coal units, makes it all the more important for the Commission to make findings about the deficiencies in Ameren's IRP and to order Ameren to expeditiously submit a compliant IRP, rather than allowing the company to wait until the next IRP filing deadline, when many of the critical decisions regarding retrofitting of existing generation resources will likely have already been made.

CONCLUSION

For all of the foregoing reasons, the Commission should declare Ameren's IRP non-compliant with Chapter 22 in its entirety.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and sent by email on this 21st day of February, 2012, to all counsel of record.

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