BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Adjust Its Revenues for Electric Service	))))	File No. ER-2022-0337 Tracking No. YE-2023-0031

SIERRA CLUB'S REPLY BRIEF

Sierra Club respectfully submits this Reply to Ameren Missouri's Initial Post-Hearing Brief, on Issue 3 related to the Labadie coal plant. As Sierra Club stated in our Initial Brief, the Commission should, as a condition of approving the requested spending at Labadie in this case, 1) require Ameren to identify capital spending at Labadie that would be avoidable with earlier retirement and 2) require that Ameren file a Certificate of Convenience and Necessity ("CCN") proceeding before Ameren installs new air pollution controls in response to a U.S. EPA regulation.[1] In just the next five years, Ameren plans to spend significant capital merely to maintain the Labadie units in operations.[2] Further, the Labadie units face compliance costs from a U.S. EPA final cross-state ozone rule (which requires Selective Catalytic Reduction ("SCR") for nitrogen oxides emissions at Labadie) and risks of other costs from a potential U.S. regional haze rule and updated proposed Mercury Air Toxics Rule ("MATS") rule.[3] The points made in Ameren's Initial Post-Hearing Brief on this topic are unavailing.

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[1] *See* Sierra Club Initial Post-Hearing Brief at 1-2.

[2] *See* Sierra Club Initial Post-Hearing Brief at 2-4 (citing Direct Testimony Exhibit 500(P), Comings Direct Testimony at 6-7).

[3] Sierra Club Initial Post-Hearing Brief at 3; Exhibit No. 500(P), Comings Direct Testimony, at 7, 21-29.

First, Ameren states that Sierra Club's Labadie issues are "better suited" for its Integrated Resource Plan ("IRP") process.[4] But Sierra Club's request to identify capital projects, among those Ameren is already planning, that would be avoidable by retirement within the decade is better suited to a rate case where specific maintenance projects are at issue. In fact, Sierra Club's recommendation on this point is designed precisely to aid the Commission's review of capital maintenance projects in future rate cases. Further, and as to major environmental capital projects, the Commission's IRP process is not a contested case proceeding, with robust discovery rights and cross-examination of witnesses. The Commission does not generally rule on the substance of an IRP.[5] This upcoming 2023 IRP will be an especially consequential one for customers, as Ameren must determine how to manage risk at Labadie in the face of ongoing capital maintenance costs, the final EPA Good Neighbor Rule, and the risk of other U.S. EPA regulations imposing further costs on Labadie (including the regional haze rule and updated MATS rule).[6] In theory, a contested-case IRP process could be designed to deal with these issues, but such a process does not exist in Missouri. Ameren could, for example, rely on objectively wrong compliance assumptions—the type of assumptions that would not survive a contested case proceeding—and the Missouri IRP process has no adequate means to address and correct those assumptions. Thus, Ameren's desire to punt all coal-plant planning issues to its IRP does not adequately protect customers regarding the circumstances facing Labadie today.

[4] Ameren Initial Post-Hearing Brief at 53.

[5] File No. EO-2011-0271, Report and Order, Issued March 28, 2012, p. 10.

[6] Sierra Club Initial Post-Hearing Brief at 3; Exhibit No. 500(P), Comings Direct Testimony at 7, 21-29.

Second, Ameren observes that Sierra Club has made "no allegation of imprudence" on this topic of Labadie spending and planning.[7] But Sierra Club is not asking for a disallowance and thus the lack of a claim of imprudence should not be dispositive. Further, while Staff may not have phrased its claim as one of a disallowance, the fact that Rush Island is no longer fully useful to Ameren's electric customers caused Staff to recommend, in its pre-filed testimony, that Rush Island should essentially be excluded from rate base.[8] Ameren's resource planning around Rush Island has arguably not been fully transparent or necessarily reasonable. Thus, some additional scrutiny for the same type of decisions for Labadie would be reasonable.

Last, Ameren argues that the issues regarding prudent planning at Labadie can ultimately be dealt with in future rate cases.[9] This point provides insufficient protection for customers for several reasons. For one thing, as noted here, Sierra Club's request to require Ameren to identify avoidable capital projects among its vast maintenance spending is designed precisely to facilitate future review in rate cases. A specific turbine project (to use a generic hypothetical) may appear prudent if a coal unit has a 20-year remaining useful life, but may not be prudent if the unit retires in the face of an SCR or Flue Gas Desulfurization ("FGD") requirement (driven by a regional haze rule) before the end of the decade. Thus, Sierra Club's recommendation on this point would simply aid the Commission's review of the prudence of capital maintenance spending in future rate cases. Further, for the very large environmental capital projects—SCR and FGD requirements—future rate cases may provide insufficient protection. This may be because the CCN regulation might not

[7] Ameren Initial Post-Hearing Brief at 53.

[8] Exhibit No. 125, Rebuttal Testimony of Claire M. Eubanks on Behalf of Staff at 20 ("In this case, the reality is Rush Island is not fully available, not fully used and useful for service, in that there are limitations on its operations. Therefore, Staff recommends a rate base adjustment to reflect this reality. Staff also accounted for this reality in its fuel modeling.")

[9] Ameren Initial Post-Hearing Brief at 53.

apply and it may not even be possible to know for sure if the CCN regulation is triggered, as Sierra Club explained in our Initial Post-Hearing Brief.[10] Further, the total cost of such SCR and FGD, which Ameren may view as distinct decisions instead of a unified one, may be so significant that a Commission disallowance would harm Ameren's financial integrity and credit rating. Thus, even if the Commission viewed a decision to install these major pollution controls as imprudent after-the-fact, it may be reluctant to exclude all of the costs from rate base. Requiring that Ameren prove the reasonableness of any decision to install SCR or FGD on Labadie units before construction is undertaken provides superior protection for customers without risking tying the hands of the Commission, as a practical matter.

In sum, and as stated in Sierra Club's Initial Brief with respect to the Labadie coal units, Sierra Club respectfully asks that the Commission grant the following relief.

1) Order Ameren to identify capital costs that would be avoided if any of the Labadie units were to retire before the end of this decade.

2) Order Ameren to seek a Certificate of Convenience and Necessity from the Commission before installing new air pollution control equipment at Labadie in response to the Good Neighbor Plan or other U.S. EPA regulation.

[10] Sierra Club's Initial Post Hearing Brief at 6-7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Sierra Club's Reply Brief was electronically filed on this date via the Missouri PSC's electronic filing system. Notice of this filing will be served upon all parties of record who have registered through this electronic filing system.

Date: May 15, 2023

/s/ Tony Mendoza
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