

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

In the Matter of Union Electric Company's       )  
2011 Utility Resource Filing Pursuant to       )  
4 CSR 240 – Chapter 22                               )     **Case No. EO-2011-0271**

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**STAFF'S REPLY BRIEF**

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Respectfully submitted,

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## **I. Introduction**

The meaning of “primary selection criterion” in the phrase “use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan” of Rule 4 CSR 240-22.010(2)(B) in the Commission’s Chapter 22 rules is critically important because of its impact on the Missouri Public Service Commission’s (Commission) ability to use those rules to accomplish the “fundamental objective” of Chapter 22: “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.”<sup>1</sup> In this case the Commission will clarify the meaning of “primary selection criterion” in its Rule 4 CSR 240-22.010(2)(B) when it determines whether Union Electric Company d/b/a Ameren Missouri’s (Ameren Missouri or Company) interpretation of “primary selection criterion” complies with Chapter 22.

If the Commission agrees with Staff and rejects Ameren Missouri’s interpretation, then Staff recommends that the Commission define “primary selection criterion” as used in the rule.

Rule 4 CSR 240-22.010(2)(B) requires that utilities “use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan.” In choosing its preferred resource plan, Ameren Missouri’s management assigned cost—defined as present value of revenue requirements (PVRR)—a weight of 30 percent as a selection criterion, and assigned four other selection criteria—which the Company called “policy objectives”—a total weight of 70 percent.

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<sup>1</sup> 4 CSR 240-22.010(2) 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.

In Staff's view, giving PVRR a weight of 30 percent and other criteria a weight of 70 percent means that PVRR was not the "primary selection criterion," and, therefore, Ameren Missouri's method used for choosing its preferred resource plan does not comply with Chapter 22. Ameren Missouri's method renders the word "primary" meaningless, because a utility could choose for PVRR to have very little significance in its preferred resource plan selection process by expanding the number of criteria it uses, if it decides to do so.

At stake in this case is the preservation of the Commission's expressed "fundamental objective" of the entire electric utility resource planning process: "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."<sup>2</sup> Whether minimizing long-run utility costs retains its primacy in Chapter 22 Electric Utility Resource Planning depends on the Commission's decision on this issue.

Staff's position requires utilities to focus on minimizing long-run utility cost when choosing its preferred resource plan, while providing the flexibility to account for risk associated with various candidate resource plans. Ameren Missouri's position will effectively divorce minimizing long-run utility cost from the preferred resource plan selection process.

Therefore, the Commission should clarify the meaning of "primary selection criterion" in Rule 4 CSR 240-22.010(2)(B), and the Commission should find that Ameren Missouri's interpretation of "primary selection criterion" when selecting its preferred resource plan does not comply with Chapter 22.

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<sup>2</sup> Rule 4 CSR 240.010(2). All rule citations refer to the IRP rules in effect prior to June 30, 2011, unless otherwise noted.

## **II. Staff's Reply to Ameren Missouri's Initial Brief**

### **A. Staff is asking the Commission to enforce Chapter 22, not make decisions for the Company.**

Ameren Missouri suggests that the Commission will be unlawfully micro-managing the Company if it enforces the Chapter 22's emphasis on PVRR as the "primary" selection criterion.

However, the Commission considered this suggestion in its first Chapter 22 rulemaking. When the Commission affirmed PVRR as the "primary" selection criterion, the Commission also expressly affirmed that Chapter 22 does not unduly intrude on the utility's decision-making process:

*"The commission finds that the rules reflect the intent to set basic planning parameters, largely in the areas of data gathering and analyses, to ensure that long-range resource planning is based on adequate and accurate data.... The commission is of the belief that the rules should be put in place to promote proper, accurate, and increasingly necessary long-range planning, but not to dictate either the strategic decision itself or the decision-making process."*<sup>3</sup>

Thus, the Commission specifically considered whether Chapter 22 invited Commission micro-management and concluded it did not. Therefore, Ameren Missouri can comply with the rule by using PVRR as its primary selection criterion while retaining its managerial independence. The Commission can reject Ameren Missouri's method of weighing PVRR without improperly intruding on the Company's management.

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<sup>3</sup> Ex. 8, *Order of Rulemaking*, p. 13. Emphasis added.

**B. Staff’s interpretation of “primary” in Rule 4 CSR-22.010(2)(B) does not render other rules meaningless.**

Ameren argues that giving PVRR a “very high weight,” as Staff recommends, would not meet the “plain and ordinary” meaning of “primary.” The Company doesn’t explain exactly how a “very high weight” falls outside the meaning of “primary,”<sup>4</sup> but instead argues that Staff’s interpretation would render several other IRP rules “meaningless.”

Specifically, Ameren Missouri argues that giving PVRR a “very high weight” would “make meaningless the identification of any other planning objectives pursuant to Rule 4 CSR 240-22.060(1).” Further, Ameren Missouri argues that giving PVRR a very high weight would remove any meaning from Rule 4 CSR 240-22.070(6)(A),<sup>5</sup> which requires that the preferred plan strike an appropriate balance between the various planning objectives specified in Rule 4 CSR 240-22.010(2).

Since the Commission rejected Ameren Missouri’s proposed treatment of PVRR in the Commission’s initial Chapter 22 rulemaking,<sup>6</sup> it must be possible to give PVRR a very high weight and still comply with the rest of Chapter 22. Rule 4 CSR 240-22.060(1), which Ameren Missouri cites, is the rule related to *integrated resource analysis*, and not the rule related to *risk analysis and strategy selection*, which is Rule 4 CSR 240-22.070.<sup>7</sup>

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<sup>4</sup> Ameren Missouri concedes that PVRR is “very important and... should be the primary selection criteria,” but that PVRR “cannot dictate the final decision without applying other considerations.” Tr. 4 p. 18-21. Staff agrees. Staff simply argues with the way Ameren Missouri weighs these “other considerations” relative to PVRR.

<sup>5</sup> Ameren Missouri incorrectly cites 4 CSR 240-22.070(1)(A) as requiring that the preferred plan strike an appropriate balance between the various planning objectives specified in 4 CSR 240-22.010(2). See *Initial Post-Hearing Brief of Ameren Missouri*, p. 7-8.

<sup>6</sup> See Ex. 9, *Initial Comments of Union Electric Company*, p. 27-31. The Company argued that the word “primary” should be replaced by “initial,” to reflect the Company’s position that PVRR should be given no more weight than any other factor. The Commission rejected that argument. Ex. 8, *Order of Rulemaking*, p. 15-16.

<sup>7</sup> See Tr. Vol. 2, p. 146, ln. 5 – p. 151 ln. 14.

Ameren Missouri witness Matt Michels explained that Rule 4 CSR 240-22.060—which Ameren Missouri used to winnow 216 “alternative resource plans” into 16 preliminary “candidate resource plans”<sup>8</sup>—does not provide any guidance for weighing policy objectives, such as PVRR, at this stage of the planning analysis. Staff agrees. As Staff explained in *Staff’s Initial Brief*, Staff has no argument with Ameren Missouri’s weighing of PVRR in its Rule 4 CSR 240-22.060 analysis, because the goal at this stage is a robust, diverse range of candidate resource plans.

The problem arises later, when Ameren Missouri weighs five “policy objectives” to select its preferred plan.<sup>9</sup> To select the preferred resource plan at this stage, Ameren Missouri weighted cost at 30 percent, environmental/diversity at 20 percent, financial/regulatory at 20 percent, customer satisfaction at 20 percent and economic development at 10 percent.<sup>10</sup> ***It is Ameren Missouri’s method of weighing cost when selecting its preferred resource plan that, in Staff’s view, violates Rule 4 CSR 240-22.010(2)(B).***

Rule 4 CSR 240-22.070 is supposed to guide the utility in “strategy selection” by instructing utilities to “strike an appropriate balance between the various planning objectives specified in 4 CSR 240-22.010(2).”<sup>11</sup> Read in conjunction with Rule 4 CSR 240-22.010’s requirement that the “primary selection criterion” shall be PVRR, the rules indicate that the utility should select the resource plan with the lowest PVRR, unless the risk factors in Rule 4 CSR 240-22.010(2)(C) dictate a different result.

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<sup>8</sup> See Ex. 1, *Ameren Missouri 2011 IRP*, Chapter 9, p. 1, and Tr. Vol. 2, p. 147, lns. 1-20.

<sup>9</sup> See Ex. 1, *Ameren Missouri 2011 IRP*, Chapter 10 p. 2, Figure 10.1 and p. 13, Figure 10.5. See also Tr. Vol. 2, p. 150, ln. 11 to p. 151, ln. 14.

<sup>10</sup> Tr. p. 151, lns 5-22. The Company’s witness indicated that the numerical weights appeared in the work papers even though they were omitted from the resource plan filing.

<sup>11</sup> 4 CSR 240-22.070(6)(A).

Therefore, contrary to Ameren Missouri's argument, Rule 4 CSR 240-22.070(6)(A) allows utilities the flexibility to choose a plan which does not have the lowest PVRR, if, based on the utility management's review of other considerations, that plan is found to have undue risks. The rule does *not* allow the utility to simply ignore the requirement that PVRR be the primary selection criterion. For the Commission, the parties and the public to understand the costs and risks of a particular plan, the utility's preferred resource plan selection process must clearly identify the resource plan with the lowest PVRR. Only then can the utility consider the risks associated with the low-cost plan and other plans to justify its selection of a different plan.

Ameren Missouri's method creates a serious problem. In effect, it allows electric utilities to treat PVRR as just one of many factors. If Ameren Missouri is right, electric utilities can, for instance, identify 11 selection criteria and give PVRR a weight of 10 percent and the other factors a weight of 9 percent each, and then claim compliance. If Ameren Missouri is right, then the word "primary" in the rule has no real meaning, and the "fundamental objective" of Chapter 22 is a dead letter. This cannot be what the Commission intended.

### **III. Conclusion**

Ameren Missouri's treatment of utility costs in this case comes as no surprise. During both the original rulemaking and the recent rulemaking for revisions to Chapter 22, Ameren Missouri argued that minimizing the utility's revenue requirement should be just one of many factors, not the primary factor, in choosing a preferred resource plan. The Commission rejected Ameren Missouri's arguments in both rulemaking cases. Ameren Missouri's compliance filing in this case effectively treats minimizing long-run utility cost as just one factor among many in choosing its preferred resource plan. In this case, Ameren Missouri essentially

reverts once again to the definition of “primary selection criterion” it desires, instead of the definition of “primary selection criterion” the Commission has adopted.

The Commission should, once again, insist that electric utilities shall use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing their preferred resource plans. Otherwise, the fundamental objective of “energy services that are safe, reliable and efficient, at just and reasonable rates” is nothing but words.

The Commission should clarify the meaning of “primary” in Rule 4 CSR 240-22.010(2)(B) and find that Ameren Missouri’s compliance filing does not comply with Chapter 22.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 21st day of February, 2012, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

**/s/ John D. Borgmeyer**