BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF'S INITIAL BRIEF

Respectfully submitted,

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I. INTRODUCTION

As Staff stated in its opening statement in this case, Staff is requesting the Commission to decide only one issue. That issue is the meaning of "primary" in rule 4 CSR 240-22.010(2)(B). How the Commission decides the meaning of this word could impact the bills of Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") customers in the aggregate by several billion dollars over 29 years, based on the information provided by Ameren Missouri in its resource plan filing.[1]

This issue exists not only in the rules which were in effect when Ameren Missouri made its Chapter 22 integrated resource planning ("IRP") filing that initiated this case; this issue exists in the current IRP rules as well. Therefore, Staff recommends that the Commission clarify the meaning of rule 4 CSR 240-22.010(2)(B), particularly the meaning of "primary," and order the Company to comply with the clarified rule in its future IRP notice of change in preferred resource plan, annual update and triennial compliance filings.[2]

II. ARGUMENT

Ameren Missouri did not comply with the Commission Rule 4 CSR 240-22.010(2)(B) requirement to "use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing [its] preferred resource plan."

This issue turns on the meaning of "primary," and the duties that word imposes on utilities throughout the resource planning process. The Commission must decide whether Ameren Missouri's method of weighing policy objectives in choosing its preferred resource plan

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[1] Ex. 16, *Rebuttal Testimony of John A Rogers*, p. 16 lns. 16-19.

[2] Ex. 17, *Surrebuttal Testimony of John A. Rogers*, p. 12. In its *Order Granting Intervention and Consolidating with IRP Case* issued in this case on December 21, 2011, the Commission consolidated this case with File No. EO-2012-0127, in which Ameren Missouri filed notice that it had changed its preferred 2011 utility resource plan. Staff's recommendation for both cases is the same: the Commission should clarify rule 4 CSR 240-22.010(2)(B), and the Commission should require Ameren Missouri to follow the Commission's guidance in choosing its preferred resource plans in the future.

complies with the rule's requirement to use minimization of the present worth of long-run utility costs[3] as the "primary selection criterion."

Ameren Missouri's method does not comply with the rule. Ameren Missouri diluted the importance of cost as a selection criterion far below any reasonable definition of "primary," even though it assigned cost the greatest weight in selecting its preferred plan, because the total weights that it assigned the multiple policy objectives it also used as criteria were given more than twice the weight given to cost. The Commission should uphold the "fundamental objective" of the resource planning process—to provide the public with safe, reliable, efficient energy services at "just and reasonable rates" in a manner that serves the public interest—by clarifying that cost, as the primary selection criterion for choosing the preferred resource plan, *is the exclusive factor*, unless it is constrained or limited by other considerations that are consistent with the "fundamental objective" of the resource planning process. And, even then, minimizing cost should only be "constrained or limited" to the extent required to meet the fundamental objective of the resource planning process. Therefore, the Commission should reject Ameren Missouri's method, potentially saving Ameren Missouri customers billions of dollars while maintaining safe, reliable and efficient energy service.

A. Minimizing PVRR shall be the "primary selection criterion" of a preferred resource plan, in order to uphold the fundamental objective of Chapter 22.

Both the 1993 original version[4] and the 2011 revision[5] of Chapter 22 require minimizing cost as one of three pillars of resource planning. Both versions of the rule state:

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[3] Throughout this case, "minimization of the present worth of long-run utility costs" is referred to as minimization of the present value of the utility's revenue requirement (PVRR), or simply "minimization of cost."

[4] Ex. 16, *Rebuttal Testimony of John A. Rogers*, p. 5 lns. 10-14, p. 8 lns. 1-12.

[5] 4 CSR 240-22.010(2). The revised version of 4 CSR 240-22.010(2)(B) indicates that the minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan is

"The *fundamental objective* of resource planning 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."[6]

Both versions of rule 4 CSR 240-22.010(2) describe the three pillars of resource planning when they state the fundamental "objective requires that the utility "shall—"

1. Consider and analyze demand-side efficiency and energy management measures on an equivalent basis with supply-side alternatives in the resource planning process;[7]

2. Use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan[8]; and

3. Explicitly identify and, where possible, quantitatively analyze 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.[9]

One implication of this three-pillar structure is that utilities should give *all* the weight, or at least a very high portion of it, to cost in the selection of the utility's preferred resource plan.[10] That is, minimization of PVRR should be the *only* criterion used to select the preferred resource plan, unless—pursuant to 4 CSR 240-22.010(2)(C)—other critical considerations cause the utility's decision-makers to "constrain or limit" the use of minimizing PVRR when selecting its plan.[11] Examples of these types of critical considerations are listed in the rule

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"subject to the constraints in subsection (2)(C)." Otherwise, the original and revised versions of the rule are the same. Staff's argument in this case applies to both the original and revised Chapter 22 rules.

[6] *Id*. Emphasis added.

[7] Ex. 16, *Rogers Rebuttal*, p. 8 lns. 1-12, 4 CSR 240-22.010(2)(A)-(C).

[8] *Id.*

[9] *Id.*

[10] Ex. 16, *Rogers Rebuttal*, p. 13, lns. 17-20.

[11] *Id*. at p. 9, lns. 13-16.

4 CSR 240-22.010(2)(C)(1)-(3); these considerations mitigate risks associated with factors that affect the costs of the plan, risks associated with environmental regulations and rate increases. For example, if the results of the planning process show that the PVRR of Plan A is $1 million less than Plan B but Plan A includes an unproven resource, Plan B could be chosen by the electric utility because of the risk that Plan A may not provide reliable electricity and because there is not a large difference in the PVRR between the two plans.

Thus, because the rule makes minimizing PVRR "primary," the rule requires the utility to focus on minimizing customer bills by minimizing costs[12] in order to fulfill the fundamental objective of resource planning—safe, reliable and efficient energy supplies "at just and reasonable rates," provided "in a manner consistent with the public interest."

B. Ameren Missouri's definition of "primary" in this case dramatically diminishes the importance of reducing utility cost.

In this case, Ameren Missouri defined "primary" as "given the greatest weight."[13] The company argues that this definition justifies its method of assigning cost a marginally greater percentage weight than any number of other factors during the decision-making process. The method, as described in Chapters 9 and 10 of Ameren Missouri's IRP filing and in the testimony of company witness Matt Michels, subverts the fundamental objective of resource planning by effectively gutting rule 4 CSR 240-22.010(2)(B).

[12] Staff acknowledges that demand-side programs may reduce overall electric load, which may increase rates, the rates as a result of demand-side management should be less than rates without demand-side management.

[13] Tr. Vol. 2 p. 62, lns. 19-24.

Ameren Missouri considered cost in two different portions of its planning:

First, Ameren Missouri considered cost as one of six "policy objectives" used to winnow 216 "alternative resource plans" into 16 preliminary "candidate resource plans."[14] In this analysis, Ameren Missouri assigned a 25 percent weight to cost, 20 percent to environmental, 10 percent to energy efficiency, 20 percent for financial regulatory, 15 percent for customer satisfaction and 10 percent for economic development. In this analysis, then, cost had a 25 percent weighting, while other factors received a total weighting of 75 percent.[15] <u>In Staff's view, Ameren Missouri gave cost an appropriate weight **at this stage of the planning process**, which winnowed a wide range of alternatives into a robust selection of candidate resource plans.</u>[16]

Later, at the end of the process, Ameren Missouri's senior management used a "scorecard" to once again apply five "policy objectives,"[17] including cost, to the final candidate resource plans in order to arrive at the preferred resource plan. <u>**It is Ameren Missouri's method of weighing cost in this final analysis that, in Staff's view, violates rule 4 CSR 240-22.010(2)(B).**</u>

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.[18] Thus, at this stage, Ameren Missouri weighted cost at 30 percent and other factors at 70 percent.

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[14] See Ex. 1, *Ameren Missouri 2011 IRP*, Chapter 9, p. 1. Tr. Vol. 2, p. 147, lns. 1-20.

[15] Tr. Vol. 2, p. 148, lns. 17-20.

[16] *Id.* at p. 149, ln. 10 to p. 150, ln. 10.

[17] 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.

[18] 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.

Ameren Missouri did not consider minimizing cost the "primary selection criterion in choosing the preferred plan." Indeed, other factors far outweighed minimizing PVRR in Ameren Missouri's selection of a preferred resource plan. Should the Commission endorse Ameren Missouri's approach, it would encourage utilities to concoct ever more objectives and factors that effectively dilute the importance of minimizing PVRR. For example, a utility could consider cost along with 10 other objectives—if it assigned each objective a weight of 9 percent and cost a weight of 10 percent, it could argue it has complied with the rule, but minimizing PVRR would have an ***actual weight*** of only ***ten percent*** in selecting the preferred plan.[19]

This method of diluting cost from the "primary criterion" to "one of many criteria," while meeting the fundamental objectives of safe and reliable service, will result in plans that do not focus on reducing costs, that could contravene the public interest by wasting energy resources, and that could lead to unjust and unreasonable rates. This method subverts the fundamental objective of resource planning, and therefore this method cannot be what the Commission intended when it promulgated its Chapter 22 rules.

C. The Commission has consistently rejected Ameren Missouri's arguments to reduce the importance of minimizing cost when selecting a preferred resource plan.

Ameren Missouri's method of watering down the importance of minimizing cost in preferred resource planning is no surprise. Throughout the history of Chapter 22 rulemakings, Ameren Missouri has consistently argued that cost should be one factor among many, rather than the primary selection criterion. And the Commission has consistently rejected that argument.

In its comments to the original resource planning rules in 1992, Ameren Missouri asked the Commission to change "primary" to "initial," reflecting the Company's belief that cost

[19] Ex. 16, *Rogers Rebuttal*, p. 11.

should be simply the *first* consideration, rather than the most important one.[20] The Company also argued that the word "choosing" should be replaced with "developing," "to avoid any suggestion that one consideration (minimization of revenue requirements) more than any of the others determines which plan the utility must select."[21] Ameren Missouri argued that "equal treatment should be given to all of the criteria, e.g., minimizing rates, minimizing costs, minimizing environmental impact, maximizing reliability and flexibility."[22]

The Commission rejected each of the Company's proposed revisions. In the section identified as "4 CSR 240-22.010" of its 1992 *Order of Rulemaking*, the Commission responded to utility comments by modifying the rule to encourage rate-minimization and flexibility.[23] In doing so, however, the Commission explicitly reinforced the importance of cost minimization by stating, "The commission… still holds to the proposition that cost-minimization should be of primary importance in resource plan selection."[24]

When the Commission revised Chapter 22 in 2011, Ameren Missouri urged the Commission to adopt rule changes proposed by the Missouri Energy Development Association (MEDA). One of those changes was to delete the word "primary," which would reduce the minimization of PVRR to be merely "*a* selection criteria."[25] By refusing to adopt this MEDA proposed rule change, the Commission rejected Ameren Missouri's second attempt to water down the importance of minimizing cost in the selection of the preferred resource plan.[26]

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[20] Ex. 9, *Initial Comments of Union Electric Company*, p.27-30.

[21] *Id*.

[22] Ex. 4, CSR 240-22 *Order of Rulemaking* under "4 CSR 240-22.010 Policy Objectives."

[23] *Id.* At the suggestion of utilities, the Commission substituted the word "other" for "secondary criteria" in rule 4 CSR 240-22.010(2)(C).

[24] *Id*.

[25] EX-2010-0254, *Comments of Ameren Missouri*, *MEDA IRP Rules* p.1 (emphasis added).

[26] *Missouri Register*, May 16, 2011; Vol. 36 No. 10 p. 1352.

Since the Commission's Chapter 22 rules first went into effect, in only one other compliance filing did a company *not* use minimization of PVRR as the primary criterion for selecting its preferred resource plan. In Case No. EO-94-360, Kansas City Power & Light Company used "average system rates" as its preferred resource plan selection criterion. The Commission again emphasized the importance of minimization of PVRR in its *Order Concerning Compliance* in that case as follows:

> "The filings in this docket demonstrate that KCPL used minimization of average system rates (ASR) as its sole selection criterion in connection with DSM planning. The rules states [sic] in no uncertain terms that the utility shall use minimization of present worth of long run utility costs as the primary selection criteria in choosing the preferred resource plan."[27]

D. Ameren Missouri's justification for its definition of "primary" is not persuasive.

Ameren Missouri argues that "primary" in this rule simply means "given the greatest weight."[28] The manner in which the Company applied this definition cannot accord with the Commission's intent, because, as explained above, it creates the counter-productive incentive to water down the concept of minimizing PVRR by adding ever more factors into the Company's decisionmaking to select its preferred resource plan. Ameren Missouri essentially concedes this point, but urges the Commission to ignore the problem because "that wasn't done here."[29] Yet, if the Commission ratifies this approach the Commission should expect the electric utilities to exploit the opportunity to reduce the importance of minimizing PVRR in their future Chapter 22 filings.

[27] EO-94-360, *Order Concerning Compliance*, p.2.

[28] Tr. Vol. 2 p. 62, lns. 19-24.

[29] *Id*., p. 63, lns 6-23.

Ameren Missouri also argues that "[w]hile PVRR is a measure of total cost, rate increases also measure the change in total cost over the planning horizon."[30] This is the same argument that Kansas City Power & Light Company made in the previously referred to Case No. EO-94-360. The argument failed then, and it should fail now. Rates are derived by dividing utility cost by weather-normalized annual sales.[31] Over time, cost-effective demand-side resources reduce cost (PVRR), but rates increase due to an ever-larger relative decrease in weather-normalized annual sales. Thus, the consequence of using rate increases as a measure of total cost over the planning horizon is that such a method favors plans with few or no cost-effective energy efficiency programs, since energy efficiency programs decrease customer usage more than they decrease utility cost (PVRR).[32]

E. The Commission should clarify the meaning of "primary" to emphasize the importance of minimizing PVRR in resource planning.

Staff is not the only party to raise this concern. The Office of Public Counsel[33], the Missouri Department of Natural Resources[34] and a coalition of other parties[35] also argue that Ameren Missouri has violated rule 4 CSR 240-22.010(2)(B). While Staff may not necessarily agree with other parties' recommendations on how the Commission should address this

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[30] Ex. No. 2, *Response to Comments of Parties*, page 95.

[31] Ex. 16, *Rogers Rebuttal*, p. 13.

[32] *Id.* The legislature has expressly stated that "[i]t shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." See the "Missouri Energy Efficiency Investment Act (MEEIA), Section 393.1075.3 RSMo. "The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section *with a goal of achieving all cost-effective demand-side energy savings*." Section 393.1075.4 RSMo (emphasis added).

[33] EO-2011-0271, *Review of the Union Electric Company Integrated Resource Plan* filed June 23, 2011, p. 3-4.

[34] EO-2011-0271, *Rebuttal Testimony of John Noller*, p. 26 lns 5-18.

[35] EO-2011-0271, *Coalition Report* filed June 23, 2011, p. 7-9.

problem,[36] the broad concern over this issue indicates the need for Commission guidance on the meaning of "primary" in this rule.

III. **CONCLUSION**

Staff recommends the Commission uphold the "fundamental objective" of the resource planning process—to provide the public with safe, reliable, efficient energy services at "just and reasonable rates" in a manner that serves the public interest—by clarifying that cost, as the "primary selection criterion," is the exclusive factor for choosing the preferred resource plan, unless it is constrained or limited by other critical considerations that are consistent with the "fundamental objective" of the resource planning process and, even then, it should only be constrained or limited to the extent required to meet the "fundamental objective" of the resource planning process.

Ameren Missouri's definition of "primary" undermines a rule that has been designed to select least-cost resources by focusing on demand-side energy efficiency equally with supply-side resources.[37] Therefore, Staff also recommends the Commission reject Ameren Missouri's method and order the Company to comply with the clarified rule in its future IRP notice of change in preferred resource plan, annual update and triennial compliance filings.

[36] Rather than recommend the Commission order Ameren Missouri to redo its analysis and to file a revised resource planning filing, Staff suggests it would be more efficient and effective for Ameren Missouri to commit to certain principles to finalize this compliance filing. Ex. 17, *Surrebuttal Testimony of John A. Rogers*, p. 12.

[37] 4 CSR 240-22.010(2)(A). The Commission rightly recognized the potential for energy efficiency to reduce the long-run costs of providing services to its rate payers: "While [the Commission] cannot assume management control of the company by ordering Ameren Missouri to spend additional money on energy efficiency programs, Ameren Missouri at some point in the future will once again come before the Commission in a rate case. At that time the Commission will look closely at the company's willingness to reduce the long-run cost of providing services to its ratepayers by pursuing energy efficiency, as well as the prudence of any decisions Ameren Missouri may make to obtain additional energy supplies that might not be needed if energy efficiency programs were appropriately implemented." ET-2012-0011, *Order Regarding Tariff*, p. 3.

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 20th day of January, 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.

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