BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re: Union Electric Company's 2014 Utility Resource Filing Pursuant to 4 CSR 240 – Chapter 22	)))	File No. EO-2015-0084

UNITED FOR MISSOURI RESPONSE TO SIERRA CLUB RESPONSE TO AMEREN MISSOURI'S MAY 1 AND JUNE 22, 2015 FILINGS

COMES NOW United For Missouri, Inc. ("UFM"), by and through its counsel, pursuant to Commission Rule 4 CSR 240-2.080(13), and responds to *Sierra Club Response To Ameren Missouri's May 1 And June 22, 2015 Filings* ("*Sierra Club's Response*"):

1. On July 1, Sierra Club filed *Sierra Club's Response*, alleging that Ameren Missouri's IRP fails to comply with the Commission's IRP Rules, 4 CSR 240-22. In its *Response*, Sierra Club claims that Ameren has failed to adequately "describe and document" its carbon regulation analysis and its assumptions regarding pollution control retrofits for its coal-fired generating fleet. Sierra Club's standard for its criticism of Ameren Missouri's IRP is that the IRP must make a simple explanation in "a manner that would allow a stakeholder to thoroughly assess the utility's resource acquisition strategy and each of its components."[1] Sierra Club provides "two specific instances" to support its argument.

2. Sierra Club's two specific instances fail to be persuasive and ironically contradict the very argument they are trying to make. The first specific instance is entitled, "If Corrected, Ameren's Internally Inconsistent Carbon Analysis Would Lead to a Different Preferred Plan." Under this heading, Sierra Club describes in detail Ameren Missouri's assessment of the

[1] Sierra Club's Response, p. 2.

potential impact of the U.S. Environmental Protection Agency's Clean Power Plan proposal. It attempts to cast Ameren Missouri's rate case testimony as inconsistent with Ameren Missouri's greenhouse gas assumptions in its IRP. A careful reading of the cited transcript shows no inconsistency at all. Sierra Club also takes issue with Ameren Missouri's $53/ton carbon price. It concludes that, "had Ameren properly utilized its assumptions in its IRP analysis, 'retirement of Labadie would have been the preferred option on a PVRR basis.' This change could save ratepayers hundreds of millions of dollars in avoided capital expenditures at Labadie."

3. While UFM disagrees with Sierra Club's conclusion, it is obvious from Sierra Club's extensive analysis of Ameren Missouri's IRP that Ameren Missouri fulfilled its obligation under the Commission's IRP rule. If Sierra Club is capable of concluding that retirement of the Labadie plant should have been the preferred option on a PVRR basis, Ameren Missouri certainly explained its assumptions in a manner that would allow a stakeholder, such as Sierra Club, to thoroughly assess the Ameren Missouri's resource acquisition strategy and each of its components, and not only assess but critique and build a conflicting conclusion thereto. Sierra Club's analysis, if anything, shows that Ameren Missouri did a commendable job in giving Sierra Club more than it could possibly need to assess the strategy.

4. The second specific instance is entitled, "Ameren's Lack of Transparency Violates IRP Rules." Sierra Club's alleged Deficiency 2 is the focus of this second specific instance. "Ameren Missouri's coal plant retrofits and retirement analysis is deficient because it inadequately considers the likelihood of increasingly stringent environmental regulations directly affecting the Company's fleet." Sierra Club's support for its alleged deficiency is as follows: (1) "Ameren **may** need to install hundreds of millions of dollars of pollution controls on Rush Island in the near future," (2)"Sierra Club **believes** that a **likely** outcome to the process currently

underway between the Missouri Department of Natural Resources ("MDNR") and EPA to bring Jefferson County back into attainment is that Ameren will be forced to comply with SO_2 emission limits at Rush Island that require the plant to either be retrofitted with a scrubber system or retired," and (3) "Sierra Club observed that Ameren failed to describe and document why it assumes that Sioux will require an SCR in 2020, but neither Labadie nor Rush Island would require the same." (emphasis added)

5. In response to these alleged deficiencies, UFM points out that there is nothing in the Commission's IRP Rule that requires Ameren to describe and document its planning to meet Sierra Club's declarations of its beliefs or expected probabilities. The Sierra Club is not the standard by which Ameren Missouri's IRP is judged; the Commission IRP rules are. Ameren Missouri has explained its assessment of the impact of these federal edicts. Sierra Club may not like it or may be intentionally ignoring it. But that is not a failure in Ameren Missouri's planning, but Sierra Club's hearing.

6. Sierra Club believes the preferred option is the retirement of Labadie and presumably the retirement of Rush Island and Sioux. They base their proposal on the EPA's proposed Clean Power Plan, possible agency action arising from EPA designating a portion of Jefferson County a one-hour SO2 NAAQS nonattainment area, and the possibility that scrubbers may be required in 2020.

7. How should the Commission analyze Sierra Club's extreme proposals? It must keep its eye on prudent utility planning and its rules. The Commission's IRP rules adequately capture these concepts.

> 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 compliance with all legal mandates, and

> in a manner that serves the public interest and is consistent with state energy and environmental policies. 4 CSR 240-22.010(2)

In compliance with this objective, a utility must,

> Consider and analyze demand-side resources, renewable energy, and supply-side resources on an equivalent basis, subject to compliance with all legal mandates that may affect the selection of utility electric energy resources, in the resource planning process; 4 CSR 240-22.010(2)(A)

These rules describe a process that is a balanced assessment of potential future opportunities and risks. The overriding goal is to achieve safe, reliable, and efficient utility service at just and reasonable rates, not to achieve a desired environmental political cause. The rule only requires utilities' plans to be consistent with state energy and environmental policies and be subject to compliance with all legal mandates. It does not require planning consistent with proposed federal policies or political speculations which fall short of mandates.

8. There is nothing reasonable or prudent about retiring electric generation plants that have served the public for decades. The Ameren Missouri power plants Sierra Club wants to shut down are necessary for safe and reliable service to Missourians. The retirement and replacement of these plants would cost Ameren Missouri ratepayers millions of dollars and harm the Missouri economy. The politically driven agenda of Sierra Club should not override the reasonable analysis of Ameren Missouri's planners.

9. The political prophesies Sierra Club stands on are far from certain. The faith of man-made climate change is falling more and more into disrepute. The science is specious and challenged at every turn. The U. S. Supreme Court is finding EPA more and more to be driven by "unreasonable interpretations."[2] In the its recent opinion in *Michigan et al. v. EPA*, the Court

[2] Utility Air Regulatory Group, et al. v. Environmental Protection Agency, 573 U.S. ____, slip op. at 24 (2014).

found EPA straying "far beyond the bounds of reasonable interpretation."[3] The Commission is well aware of the failings of the so called Clean Power Plan. As further evidence of the extremism of EPA and its surrogate Sierra Club is a report published just this morning in the Wall Street Journal, a copy of which is attached as Exhibit 1 hereto. This Commission must not adhere to political statements of faith from the EPA or its symbiotic entity the Sierra Club but must recognize legitimate analysis and planning.

WHEREFORE, UFM respectfully requests the Commission reject *Sierra Club's Response* and approve Ameren Missouri's IRP.

Respectfully submitted,

/s/ David C. Linton

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Dated: July 7, 2015

Certificate of Service

I hereby certify that a true and correct PDF version of the foregoing was sent by email on this 7th day of July, 2015, to all individuals on the Commission's service list.

/s/ David C. Linton

[3] 576 U.S. ____, slip op. at 6 (2015)

Exhibit 1

THE WALL STREET JOURNAL.

http://www.wsj.com/articles/stopping-epa-uber-alles-1436124275

OPINION | REVIEW & OUTLOOK

Stopping EPA Uber Alles

Even when states win in court, they lose. Here is one legal remedy.

Attorney General of Oklahoma Scott Pruitt *PHOTO: ANDREW HARRER/BLOOMBERG NEWS*

July 6, 2015 7:41 p.m. ET

The Supreme Court scolded the Environmental Protection Agency last week for bombing Dresden, albeit long after the bombs fell. In 2011, the year the EPA proposed the anticarbon mercury rule that the Court has now ruled illegal, some 1,500 fossil-fuel-fired electric units were in operation. Only about 100 have not already closed or complied at a cost of billions of dollars.

Oklahoma Attorney General Scott Pruitt is hoping to prevent a replay on the EPA's new Clean Power Plan, which will demand another 30% carbon reduction, on average, from the states. The rule was proposed by the EPA in June 2014 and is expected to be final by the end of this summer. The challenge Mr. Pruitt filed last week is a test of whether the snail's pace of the judicial process in response to new rules lends de facto immunity to whatever the EPA wants to do, even if the conclusion is another legal defeat that arrives too late to make a practical difference.

The EPA is counting on it. The agency knows that the Clean Power Plan's precarious legal footing will be litigated for years, but it is trying to rush the rule out to make it a policy fait accompli before President Obama's term expires. It also knows that the long lead time and investment decisions the plan compels—about power-plant retirements and upgrades, restructuring transmission lines, creating new green energy and efficiency subsidy programs—must begin today. Or better yet for the agency, yesterday.

Under traditional regulatory review, the appellate courts rarely put a stay on new EPA rules, even if states and utilities can show that they are causing irreparable and irreversible harm. The EPA is instructing Oklahoma to cut carbon emissions by 33% to meet an "interim goal" as soon as 2020, which means the state must begin spending despite the legal uncertainty.

So Mr. Pruitt is moving for a preliminary injunction against the Clean Power Plan. Under the 1958 Supreme Court precedent *Leedom v. Kyne* and a subsequent line of cases, the courts can use their powers to block federal-government actions "when an agency exceeds the scope of its delegated authority or violates a clear statutory mandate." Plaintiffs must show that they are injured by judicial delay and that they are likely to succeed on the merits.

Leedom actions have been used to stop abuses from the National Labor Relations Board and the Federal Trade Commission, and the EPA is a promising target. The agency's unprecedented measures to restructure the U.S. energy economy under an obscure provision of the 1970s-era Clean Air Act have zero grounding in the text of the statute, much less Congress's consent. Mr. Pruitt also argues that under the High Court's federalism jurisprudence the EPA is unconstitutionally commandeering the sovereign states.

If Mr. Pruitt does succeed and obtain an injunction, the Clean Power Plan would be put on ice for the rest of Mr. Obama's term, much as the Fifth Circuit blocked his executive immigration actions. More to the point, an injunction would rebuke an agency that thinks it is above the law.