

**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) File No. ER-2019-0335
Decrease Its Revenues for Electric Service)
)

SIERRA CLUB STATEMENT OF DISCOVERY DISAGREEMENT OR CONCERN

Sierra Club submits this Statement of Discovery Disagreement or Concern, and states as follows:

1. On August 15, 2019, the Commission issued an Order Setting Test Year and Adopting Procedural Schedule ("Order"). The Order set a Discovery Conference for February 5, 2020.

2. The Order also provides in paragraph 3(K) that:

Not less than two business days before each discovery conference, any party that has a discovery disagreement or concern involving another party shall file a brief statement describing that disagreement or concern and identifying any other parties involved. Such statement does not need to be a formal motion to compel. Any party may attend a discovery conference, but only those parties involved in an identified discovery disagreement or concern must attend. If the parties do not identify any discovery disagreements or concerns before the scheduled conference, the presiding officer may cancel the conference.

3. Sierra Club is filing this Statement to identify three discovery disagreements or concerns regarding Union Electric Company d/b/a Ameren Missouri's ("Ameren Missouri" or the "Company") responses to Sierra Club's Seventh and Eighth Set of Data Requests.

4. First, the Company has purported to give itself an extension for the discovery response deadline, which threatens to prejudice Sierra Club, in light of the impending February 14, 2020 deadline for surrebuttal testimony.

5. The Order provides in paragraph 3(H)(viii) that after January 21, 2020, “the response time for data requests shall be five (5) business days to provide the requested information.”

6. On January 24, 2020, Sierra Club submitted its seventh set of data requests upon Ameren Missouri.

7. On January 29, 2020, Ameren Missouri notified Sierra Club that “the Company will require an additional [business] day, to [Monday,] February 3, 2020, to respond” to Sierra Club’s seventh set of data requests “[g]iven the large number of questions and subparts and the timing of receipt.” *See* Ameren Missouri’s objection letter to Sierra Club set 7, attached as Attachment 1.

8. Ameren Missouri has filed at least nine different rebuttal testimonies responding to the direct testimony of Sierra Club witness Avi Allison.¹ Sierra Club timely submitted requests for basic information and analyses related to, or underlying, the factual and legal assertions in these testimonies. Ameren’s practice of unilaterally granting itself extensions for responses to routine questions threatens to prejudice Sierra Club’s ability to complete its review of the Company’s case by the surrebuttal testimony filing deadline. Although the Company granted itself an extension of one business day, the practical effect is a three-day extension, given the intervening weekend. Given that surrebuttal testimony is due in just two weeks, the three-day extension prejudices Sierra Club’s ability to meaningfully evaluate any responses and develop responsive testimony.

¹ *See* Rebuttal Testimony of Tom Byrne, Rebuttal Testimony of Ahmad Faruqui, Ph.D, Rebuttal Testimony of Michael W. Harding, Rebuttal Testimony of Thomas Hickman, Rebuttal Testimony of Andrew Meyer, Rebuttal Testimony of Matt Michels, Rebuttal Testimony of Darryl Sagel, Rebuttal Testimony of Steven Wills, and Rebuttal Testimony of Jim Williams filed on January 21, 2020 on behalf of Ameren Missouri.

9. Second, Ameren Missouri has refused to provide any response to Sierra Club discovery request 7.6, attached as Attachment 2. Sierra Club requested data or studies, if any, supporting Mr. Ahmad Faruqui's assertion that the expansion of an on-peak time of use rate design—as recommended by Sierra Club witness Avi Allison—would adversely affect customers. Ameren has objected, and apparently does not intend to respond, on the grounds that the question requires the Company to “engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data.” This is incorrect. If the Company does not have any such data or studies, it should be required to say so.

10. Third, Ameren has refused to provide any response to Sierra Club discovery request 8.20, which seeks any “analyses of the ‘long-term economics’ of Ameren’s coal units.” *See* Sierra Club 8.20 (quoting Rebuttal Testimony of Mr. Matt Michels at 6), attached as Attachment 3. Ameren objects and apparently does not intend to respond because the request:

seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which would render them beyond the proper scope of discovery. It also seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome in that it is not limited in time. While an objection is not required, I would also note that DR No. 8.20 may seek information protected by the attorney-client and work product privileges insofar as work respecting an upcoming triennial resource plan filing involves confidential communications with counsel respecting the content of the ultimate filing, and all such work is done in anticipation of litigating the IRP docket.

Ameren Missouri's objection letter to Sierra Club set 8, attached as Attachment 4.

11. The first and second categories of objection are incorrect; the third is unsupported. Whether the Company has evaluated the “long-term economics,” and the results of any such analyses, are clearly relevant to addressing Mr. Michel's assertion that Mr. Allison's economic analysis is flawed and the Company's assertion that a “different kind of analysis” is

necessary to draw any useful conclusions about the economics of electric generating resources.”
Rebuttal Testimony of Matt Michels at 7. If the Company has not evaluated the “long-term economics” of its coal plants, that is plainly relevant to the prudence of the Company’s ongoing spending at those units. If the Company has conducted any such evaluations, that information could lead to the discovery of admissible information and could likewise be relevant to the prudence of the Company’s spending.

12. Finally, the Company has not provided a privilege log, as required by Rule 26(B)(5). Nor has it stated what documents exist that relate to the long-term economics of the Company’s coal units. At a minimum, and without conceding any privilege arguments, the Company should produce a privilege log that would allow Sierra Club to assess the applicability of the privilege claims.

13. Thus, Sierra Club submits this Statement in advance of the February 5, 2020 discovery conference.

14. Finally, Sierra Club respectfully requests leave to appear at the February 5, 2020 discovery conference by telephone.

/s/ Henry B. Robertson
Henry B. Robertson
Great Rivers Environmental Law Center
319 N. 4th St., Suite 800
St Louis, MO 63102
314-231-4181
Fax 314-231-4184
hrobertson@greatriverslaw.org

Tony Mendoza
Senior Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
415-977-5589
Fax: 510-208-3140

tony.mendoza@sierraclub.org

Josh Smith
Senior Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
415-977-5560
Fax: 510-208-3140
joshua.smith@sierraclub.org

Counsel for Sierra Club

Dated: January 31, 2020

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 31st day of January, 2020, with notice of the same being sent to all counsel of record.

/s/ Tony Mendoza _____
Tony Mendoza

Attachment 1

SMITH LEWIS, LLP
ATTORNEYS AT LAW

P.O. BOX 918
COLUMBIA, MISSOURI 65205-0918

•••
CITY CENTRE

111 SOUTH NINTH STREET, SUITE 200
COLUMBIA, MISSOURI 65201-4891

(573) 443-3141 • Fax (573) 442-6686

BETHANY R. FINDLEY
MATTHEW R. QUETSCH
JACKIE L. RODGERS, JR.
JOHN N. ROARK, JR.

ROBERT C. SMITH (1923-2016)
RAYMOND C. LEWIS, JR. (1926-2004)

LEGAL NURSE CONSULTANT
JENNY BECKETT, RN

JOHN L. ROARK
COLLY J. DURLEY
JAMES B. LOWERY
PHEBE LA MAR
SARAH E. GIBONEY
AMANDA ALLEN MILLER
DANIEL G. BECKETT

OF COUNSEL
BRUCE H. BECKETT
WILLIAM JAY POWELL

January 29, 2020

Mr. Tony Mendoza
Sierra Club
2021 Webster Street, Ste. 1300
Oakland, CA 84612

Re: Sierra Club's Seventh Set of Data Requests

Dear Tony:

The Company objects to the "General Instructions" and "Other Instructions" that preface these DRs because the same are not authorized by the Missouri Rules of Civil Procedure which governs the terms upon which discovery may be had in Commission cases.

The Company objects to DR No. 7.6 because it seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which renders it beyond the proper scope of discovery.

The Company objects to DR No. 7.11, subparts a to f, because they seek to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which renders them beyond the proper scope of discovery. A response to the introductory question will be provided.

With respect to DRs to which responses will be provided and for which information for each of the Company's "coal units" is requested, the Company objects to providing by unit data to the extent doing so seeks to require the Company to prepare analyses or otherwise develop data or information that does not exist or is not kept by the Company in the form requested on the grounds that any such request is overly broad, unduly burdensome and exceeds the scope of authorized discovery by not seeking existing facts, documents, or information. Subject to the foregoing objection, if a request for data for "coal units" is intended to seek per unit information the same will be provided if it is kept by the Company on a per unit basis.

The Company objects to DR No. 7.18 to the extent it seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which renders it beyond the proper scope of discovery. Subject to the foregoing objection, a response will be provided.

Mr. Tony Mendoza

January 29, 2020

Page 2

The Company objects to DR Nos. 7.30 and 7.31 to the extent they seek to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which renders them beyond the proper scope of discovery. Subject to the foregoing objection, responses will be provided.

Given the large number of questions and subparts and the timing of receipt (on a Friday evening) the Company will require an additional day, to February 3, 2020, to respond.

Sincerely,

/s/ James B. Lowery

James B. Lowery

Cc: Geri Best, Carolyn Mora, Yvette Scott, Wendy Tatro

Attachment 2

Excerpt from Sierra Club's Seventh Set of Data Requests to Ameren Missouri

- 7.6 Refer to the rebuttal testimony of Ahmad Faruqui, page 6, lines 19-21.
- a. In Dr. Faruqui's estimation, how much of an adverse impact would increasing the on-peak period from 4 to 5 hours be expected to have?
 - b. Please provide any data or studies that support Dr. Faruqui's estimate of the magnitude of the adverse impact of extending the on-peak period from 4 to 5 hours.

Attachment 3

Excerpt from Sierra Club's Eighth Set of Data Requests to Ameren Missouri

- 8.20 Refer to the rebuttal testimony of Matt Michels, page 6, line 22. Provide all analyses of the "long-term economics" of Ameren's coal units.

Attachment 4

SMITH LEWIS, LLP
ATTORNEYS AT LAW

P.O. BOX 918
COLUMBIA, MISSOURI 65205-0918

•••
CITY CENTRE

111 SOUTH NINTH STREET, SUITE 200
COLUMBIA, MISSOURI 65201-4891

(573) 443-3141 • Fax (573) 442-6686

BETHANY R. FINDLEY
MATTHEW R. QUETSCH
JACKIE L. RODGERS, JR.
JOHN N. ROARK, JR.

ROBERT C. SMITH (1923-2016)
RAYMOND C. LEWIS, JR. (1926-2004)

LEGAL NURSE CONSULTANT
JENNY BECKETT, RN

JOHN L. ROARK
COLLY J. DURLEY
JAMES B. LOWERY
PHEBE LA MAR
SARAH E. GIBONEY
AMANDA ALLEN MILLER
DANIEL G. BECKETT

OF COUNSEL
BRUCE H. BECKETT
WILLIAM JAY POWELL

January 30, 2020

Mr. Tony Mendoza
Sierra Club
2021 Webster Street, Ste. 1300
Oakland, CA 84612

Re: Sierra Club's Eighth Set of Data Requests

Dear Tony:

The Company objects to the "General Instructions" and "Other Instructions" that preface these DRs because the same are not authorized by the Missouri Rules of Civil Procedure which governs the terms upon which discovery may be had in Commission cases.

With respect to DRs to which responses will be provided and for which information for each of the Company's "coal units" is requested, the Company objects to providing by unit data to the extent doing so seeks to require the Company to prepare analyses or otherwise develop data or information that does not exist or is not kept by the Company in the form requested on the grounds that any such request is overly broad, unduly burdensome and exceeds the scope of authorized discovery by not seeking existing facts, documents, or information. Subject to the foregoing objection, if a request for data for "coal units" is intended to seek per unit information the same will be provided if it is kept by the Company on a per unit basis.

The Company objects to DR No. 8.9 because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome in that it is not limited in time. Subject to the foregoing objection, a response will be provided.

With respect to DR Nos. 8.16 and 8.17 (as corrected), we are treating 8.17 as subpart d to 8.16, which I believe is clearly intended.

The Company objects to DR Nos. 8.14 through 8.16 (and as noted, 8.17 which is a part of 8.16) to the extent they seek to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which renders them beyond the proper scope of discovery. Subject to the foregoing objection, responses will be provided.

Mr. Tony Mendoza
December 17, 2019
Page 2

The Company objects to DR No. 8.20 to the extent it seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which would render them beyond the proper scope of discovery. It also seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome in that it is not limited in time. While an objection is not required, I would also note that DR No. 8.20 may seek information protected by the attorney-client and work product privileges insofar as work respecting an upcoming triennial resource plan filing involves confidential communications with counsel respecting the content of the ultimate filing, and all such work is done in anticipation of litigating the IRP docket.

The Company objects to DR Nos. 8.21 on the grounds that it calls for legal conclusions as to what process is due in a triennial IRP docket. Subject to the foregoing objection, a response will be provided.

The Company objects to subparts a and b of DR No. 8.22 because it calls for a legal conclusion. Subject to the foregoing objection, a response will be provided.

Sincerely,

/s/ James B. Lowery

James B. Lowery

Cc: Geri Best, Carolyn Mora, Yvette Scott, Wendy Tatro