

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation of Missouri)	
Jurisdictional Generator Self-Commitments into)	File No. EW-2019-0370
SPP and MISO Day-Ahead Energy Markets)	

**Sierra Club’s Motion to Extend Certain Comment Deadlines
and Establish a Process to Review Confidential Information**

1. On June 5, 2019, the Missouri Public Service Commission (“Commission”) issued its Order Opening an Investigation of Missouri Jurisdictional Generator Self-Commitments and Self-Scheduling in this docket (“Initial Order”).

2. In its Initial Order, the Commission noted that “anyone with an interest in this matter may view documents and may submit any pertinent responsive comments or documents. Materials containing confidential or proprietary information will be treated and maintained in that manner, however, a public version shall also be provided for review. As this is not a contested case, anyone may file a comment without counsel and without ex parte constraints (arising from this matter). Intervention requests are not necessary to submit comments or view documents.”

3. In addition, the Commission’s Initial Order established the following comment, information, and report deadlines for Public Service Commission Staff (“Staff”), Missouri’s investor owned electric utilities (“IOUs”), and interested stakeholders:

a. June 28, 2019—IOUs to provide generation and self-commitment data; interested stakeholders to provide information for consideration.

b. July 8, 2019—stakeholders may comment on the June 28 submissions, or provide other related materials.

- c. August 16, 2019—Staff to file a report regarding its investigation.
- d. August 30, 2019—Stakeholders may respond to Staff’s report.

4. At Staff’s request on June 27, the Commission extended the June 28 deadline to July 8, the July 8 deadline to July 17, the August 16 deadline to August 23, and the August 30 deadline to September 6.

5. Despite the extension, on June 28, Sierra Club submitted its initial comments in this docket because it wanted to provide the Commission with ample time to consider its requests. Among those requests, Sierra Club sought an extension of the July 17 deadline to July 26 to enable sufficient time for interested stakeholders to access any confidential information submitted by the IOUs and then analyze and comment upon the IOUs’ filings. Sierra Club also sought an extension from September 6 to September 13 so that stakeholders could deliberate and comment upon Staff’s report.

6. In its June 28 comments, Sierra Club requested that the IOUs provide advanced notice of any intention to file confidential information—as well as relevant non-disclosure agreements (“NDAs”)—so that stakeholders could access and review that information quickly once filed.

7. On July 8, the IOUs filed responses to the Commission’s questions. Empire District Electric Company (“Empire”), Kansas City Power & Light Company (“KCP&L”), and KCP&L Greater Missouri Operations Company (“GMO”) designated several documents confidential. Due to EFIS file size limits, Empire provided Staff with additional data directly.

8. On July 10, Sierra Club counsel and personnel filed NDAs in this docket. Shortly after filing the NDAs, Sierra Club counsel emailed Empire, GMO, and KCP&L counsel to obtain

all materials that were not filed publicly via EFIS (*see* Exhibits A and B). To date, Sierra Club counsel has not received any response.

9. Sierra Club has participated in many dockets before the Commission regarding the IOUs, ranging from integrated resource plans to rate cases to working investigations. Sierra Club is very interested in this subject matter of this investigation, and it wishes to participate meaningfully by evaluating the IOUs' filings thoroughly. Unfortunately, Sierra Club has not yet been able to obtain the critical documents that underlie two out of the three IOUs' filings.

10. If NDAs are insufficient to confer stakeholder access to the IOUs' confidential information, then the Commission could consider a protective order. The Commission has granted protective orders in investigatory dockets even though they are not "case proceedings" involving discovery and testimony within the scope of the confidentiality rule, 4 CSR 240-2.135.¹ For example, in an investigation into electric utilities' compliance with federal environmental regulations, the Commission found that a protective order was within the intent of the rule; the Commission wanted to hear from all stakeholders and did not want the need to protect confidential information to be a barrier to full responses from any stakeholder.² Likewise, in this self-commitment investigation, the comments of all parties will be informed and sharpened by access to the full range of detailed information possessed by the utilities.

11. Sierra Club respectfully requests that the Commission issue an order that: (a) outlines the procedure by which interested stakeholders can obtain and review confidential information, if different than filing NDAs in this docket, and (b) either extends the July 17 comment deadline or creates another comment deadline that is at least fourteen days after Empire, GMO, and KCP&L provide interested stakeholders with access to all non-publicly filed

¹ See, e.g., *In re Missouri's Natural Gas Local Distribution Companies*, GW-2006-0110, 2005 WL 2839986 (Oct. 20, 2005); *Investigation into Tree Trimming Practices of Union Electric*, EW-2004-0583, 2005 WL 2451226.

² EW-2012-0065, 2014 WL 4165407 (Aug. 18, 2014).

documents in this investigation. Sierra Club also requests that the Commission extend the September 6 comment deadline to September 13 so that stakeholders have a reasonable amount of time to review and comment on Staff's report.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS on this 15th day of July, 2019, as well as sent to the certified service list for this docket.

/s/ Sunil Bector
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