

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

In the Matter of Ameren Missouri's)	
2017 Integrated Resource Plan)	File No. EO-2019-0314
Annual Updated Report)	

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW, the Office of the Public Counsel (OPC or Public Counsel) to submit comments in response to Union Electric Company, d/b/a Ameren Missouri's (Ameren Missouri) Integrated Resource Plan Annual Update Report under 4 CSR 204-22.080(D). As explained below, Public Counsel concludes that Ameren Missouri's Report is deficient and thus non-compliant with Chapter 22 of the Public Service Commission's (Commission) Rules:

1. Public Service Commission (Commission) Rule describes the fundamental objective of the Commission's Electric Utility Resource Planning process as providing the public with "energy services that are safe, reliable, 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."¹

2. Commission Rule explains that the "fundamental objective" of the Commission's integrated resource planning (IRP) rules requires electric utilities to consider "risks associated with new or more stringent legal mandates that may be imposed at some point within the planning horizon."² Furthermore, "the probable environmental costs of each potential supply-side resource option shall be quantified by estimating the costs of the utility to comply with additional environmental legal mandates that may be imposed at some point within the planning horizon."³

¹ 4 CSR 240-22.010(2).

² 4 CSR 240-22.010(2).

³ 4 CSR 240-22.040(2)(B).

3. In addition to requiring triennial filings of integrated resource plans, the Commission rules require each utility to host an annual update workshop and to file an annual update in each year when it is not required to submit a new triennial compliance filing.⁴ Commission Rule 4 CSR 240-22.080(3). Thereafter, stakeholders are permitted to offer comments on the company's annual update report.

4. The "depth and detail of the annual update report shall generally be commensurate with the magnitude and significance of the changing conditions since the last triennial compliance filing or annual update filing."⁵

5. On April 25, 2019, in its 2019 Integrated Resource Plan Update Questions, the OPC asked, "Does Ameren Missouri believe IRP-impacted scenarios should be modeled in which Ameren Missouri would have to provide remedial actions related to Rush Island? If not, why?" The OPC's question refers to ongoing litigation by the United States against Ameren Missouri for noncompliance with the Clean Air Act's⁶ Prevention of Significant Deterioration (PSD) and Title V provisions regarding its Rush Island facility.⁷

6. Ameren Missouri responded, "These are the same avoided costs that were used in the 2017 IRP filing. The Company assessed the critical uncertain factors and determined that the current indicative values for these factors fall within the ranges outlined in the 2017 IRP. Therefore, there was no need for an update."

7. Ameren Missouri is correct that it accounted for environmental compliance considerations for the Rush Island facility in its 2017 IRP filing. However, Ameren Missouri's

⁴ 4 CSR 240-22.080(3).

⁵ 4 CSR 204-22.080(3)(B).

⁶ 42 U.S.C. § 7401 *et seq.*

⁷ *U.S. v. Ameren Missouri*, 4:11 CV 77 RWS (E.D. Mo.).

calculation of compliance costs alone fail to account for remedial costs imposed by subsequent court orders due to a recent determination of a PSD and Title V violation.

8. As detailed by the accompanying comments from OPC's Chief Economist, Dr. Geoff Marke, Ameren Missouri's own court filings indicate that proposed remedies for Rush Island's noncompliance with the federal Clean Air Act will amount to a significant financial impact to Ameren Missouri's customers. The full amount of remedies that Ameren Missouri may pay has not yet been determined, and Ameren Missouri will likely continually contest any amount upon appeal, but some monumental impact is nonetheless within Ameren Missouri's planning horizon. That impact is foreseeable because the U.S. District Court for the Eastern District of Missouri has already found Ameren Missouri liable.⁸ All that remains to debate is how much Ameren Missouri pays.

9. Ameren Missouri's refusal to update its resource planning with newfound liabilities pertaining to the Rush Island facility is inconsistent with Commission practice.

10. The Commission has previously interpreted its IRP rules to require Ameren Missouri to consider "new tritium regulation within the planning horizon" over the Company's objections.⁹ That is to say, this Commission recognized that electric utilities must consider known but future regulatory changes in order for resource planning to be sufficient.

11. Consider analogously that, when exploring contemporary resource planning issues, the Commission has repeatedly ordered electric utilities to "analyze and document future capital and operating costs" associated with changes in federal Clean Air Act implementation, including

⁸ *U.S. v. Ameren Mo.*, 229 F. Supp. 3d 906, 1017 (2017).

⁹ *Order Regarding Application for Waivers*, EE-2010-0243 p. 5 (Jun. 30, 2010).

the proposed Clean Power Plan.¹⁰ The Commission continues to so order utilities to consider this potential, future liability despite changes in federal leadership indicating a turn away from the Clean Power Plan.

12. If Ameren Missouri must rightfully consider potential, but still nonexistent rules, and the impacts of more stringent greenhouse gas emissions limitations, then there is no conceivable reason why Ameren Missouri's resource planning should overlook Rush Island's future, but as of yet undetermined liability.

13. The attached comments of Dr. Marke further explain OPC's rationale for finding Ameren Missouri's resource planning filing deficient, and specifically identify the remedies that Ameren Missouri may be responsible for.

WHEREFORE, the OPC responds to Ameren Missouri's Integrated Resource Plan Annual Update Report. The OPC also prays that the Commission recognize Ameren Missouri's filing to be deficient, and order the utility to incorporate the fallout of its Clean Air Act violations regarding Rush Island into its resource planning.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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¹⁰ E.g., *Order Establishing Special Contemporary Resource Planning Issues*, EO-2019-0066 p. 9-10 (Oct. 24, 2018); *Order Establishing Special Contemporary Resource Planning Issues*, EO-2017-0076 p. 4-5 (Oct. 26, 2016); *Order Establishing Special Contemporary Resource Planning Issues*, EO-2017-0073 p. 5 (Oct. 26, 2016).

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 6th Day of June, 2019, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall