

filing, demonstrates beyond any reasonable question that any member of the public who desires to read the IRP may obtain a full understanding of how the Company analyzed demand and supply-side resources, why the Company did so, and what the *results* of those analyses were. Chapter 5 discusses demand-side options in detail and contains specific cost and load-impact results (see pages 104-106). Chapter 6 analyzes supply-side resources, details potential capacity increases at existing plants (page 115) and provides technology cost and performance data for various technologies (pages 126-131, and pages 146-164). Chapter 7 examines 12 different all supply-side portfolios, three different all renewable portfolios, and 3 different demand response/efficiency resource portfolios. Chapter 8 provides specific results, on a least-cost basis with various timing considerations, with respect to which of the discussed portfolios may be the least-cost option, when, and by how much. The public can therefore review and understand how and when AmerenUE may, based upon this analysis at this time, meet its resource needs over the next 20 years.

3. The Public Version of the IRP complies with the standards set forth in the Commission's Protective Order², reveals a tremendous volume of meaningful information, as illustrated by the discussion of Document 3 above, and as also shown by the following summary of the 17 separate documents that comprise the IRP filing:

Document 1: Only approximately 10% redacted;

Document 2: Only approximately 5% redacted;

Document 3: Only approximately 10% redacted (this is the 200 page Integrated Resource Plan Analysis that explains the entire IRP filing in detail);

² It is noteworthy that the Commission's standard Protective Order, by its terms, appears to apply only to testimony and information sought during the course of discovery. Nonetheless, AmereneUE has applied the standards set forth in the Protective Order in designating portions of the IRP filing as Proprietary or Highly Confidential.

Document 4 (Vols. 1 and 2): Only approximately 25% of Volume 1 redacted; 100% of Volume 2 redacted;

Document 5: Only approximately 25% redacted;

Document 6 – Only approximately 10% redacted;

Document 7 – Approximately 99% redacted;

Document 8 – No redaction;

Document 9 – Approximately 40% redacted; and

Documents 10 – 17, Approximately 99% redacted.

4. To the extent redactions in the public version were made, the substantial majority of those redactions are in Documents 4, 7, and 10-17 which contain reports, work papers, or other documentation related to work produced by consultants. Those redactions were made in compliance with the standards set forth in the Commission’s Protective Order, which defines “Highly Confidential” information to include “(4) reports, work papers, or other documentation related to work produced by internal or external auditors or consultants.” Protective Order, Definition of Highly Confidential information, paragraph (4). Consequently, the redactions were proper, despite the Environmental Group Interveners’ protest to the contrary.

5. The Commission’s Protective Order, which is well-established and fair, makes perfect sense. The Company spent substantial amounts of money obtaining the assistance of outside consultants in preparing its IRP filing. Those consultants reviewed data and information, screened it, compiled it, and provided analyses based upon it for AmerenUE. Their screening, compilation and analyses are reflected in their reports, which were commissioned, bought and paid for by AmerenUE and, ultimately, AmerenUE’s ratepayers. For example, the more than 80-page M.S. Gerber and Associates report contains analyses of AmerenUE’s reserve margin

position and uses other proprietary information (for example, it relies upon AmerenUE's proprietary forward electric price curve data) to provide that analysis. The approximately 600 page Energy and Environmental Analysis, Inc. (Navigant) report contains Navigant's compilation and analysis of detailed pricing data for fuel and emissions allowances, that was produced specifically to meet AmerenUE's needs for this IRP filing. Other reports are similar in nature and fall squarely within the protection of subpart (4) of the Highly Confidential definition quoted above.

6. Many of the consultants require their reports be afforded confidential treatment by AmerenUE. For example, the M.S. Gerber report states that the report contains the proprietary and confidential information of M.S. Gerber. The Navigant report also notes that it contains confidential information. Additionally, AmerenUE used information from subscription sources for portions of the IRP filing. The terms of the subscription agreements do not allow publication of this information to the public in general.

7. The Environmental Group Intervenors would apparently have utilities spend significant amounts of ratepayer funds to comply with the Commission's IRP Rules and then turn the entirety of the reports and materials provided by their consultants over to any and all members of the public, other utilities, or other consultants without charge or restriction on use. It may be true, for example, that a person could search source after source after source to come up with certain data and information that, *if properly screened and compiled*, could duplicate some of the information in the IRP filing. But that does not mean that a consultant's work, paid for by ratepayers, which reflects the screening and compilation of volumes of important and useful data should simply be turned over to the world because, in theory, someone else could search for the data, screen it, and compile it if they chose to do so. The Commission has already rejected what

the Environmental Group Intervenors apparently advocate by recognizing that even if there exists underlying data that, in its raw form, may itself be publicly available, that does not make a *compilation* of that data public. *See, e.g., In the Matter of a Commission Inquiry into the Possibility of Impairment without Unbundled Local Circuit Switching When Serving the Mass Market*, Case No. TO-2004-0207 (Nov. 20, 2003) (Rejecting an attempt by Sprint to force public disclosure of a compiled list of names, that themselves could be found publicly, when those names had been screened and compiled specifically for SBC and Centurytel).

8. The remaining information not addressed above but which is redacted from the public version of the IRP is Proprietary, and is redacted from Documents 1, 2, 3, and 9. The Environmental Group Intervenors without any real explanation complain about these designations as well. *See* pages 5 – 7, and 8 of their Motion, where they question the redaction of Proprietary information from Documents 1, 2, 3 and 9.

9. The Environmental Group Intervenors would apparently have the Company reveal to those with whom it competes to buy and sell power in the wholesale energy markets its precise capacity position, the amount of energy it has available, and at what times of the day and year it is available. Moreover, the Environmental Group Intervenors apparently believe it would be acceptable for these competitors to know and understand the extent to which the Company is or is not reliant on peaking units to meet its energy and capacity needs (all of which is redacted from the public version of Documents 1, 2, 3 and 9).

10. It is true that the Company, on the *energy delivery* side of its business, operates as a regulated monopoly.³ However, the Company has to compete in important markets, such as the competitive wholesale energy markets. These facts are well known to the Commission, but

³ The Company faces competition in rural areas from rural electric cooperatives.

to state what is perhaps obvious to those who understand the electric utility business, ratepayers are directly affected in important ways by purchases and sales of power in the competitive wholesale energy markets. The Company sometimes has to buy power to meet its load, and at other times, the Company has capacity it does not use to serve its native load every hour or every day and it can sell power into those markets. If the Company can optimize its purchases and sales, which depends on contracting and hedging strategies and indeed on keeping and maintaining the confidentiality of things like its capacity and energy positions at any given time, the Company can lower its overall cost of service and, consequently, the revenue requirement it must collect from ratepayers. Perhaps the Environmental Group Intervenors fail to understand the harm to the Company and its ratepayers if the Company gives up the competitive advantage it has by keeping its “capacity position and load duration curve, capacity needs, reserve margins, and percentage of energy needs to be met by CTGs” confidential. The Company believes that the Commission fully understands that competitive advantage and must protect it.⁴

11. The Company has endeavored to make large and meaningful portions of the IRP publicly available, but has also carefully redacted information that the Protective Order allows it to redact. At some point, one has to ask why the Environmental Group Intervenors seek to turn the Commission’s Protective Order on its head, and why they are spending so much time and energy on seeking to force AmerenUE to file what would be a *fourth* version of its IRP.

12. The answer may lie in examining prior filings and participation in Commission cases, including this case, by the Environmental Group Intervenors. In their first Motion to

⁴ Perhaps the reason the Environmental Group Intervenors are not concerned if this information is made public is rooted in their belief, or at least the Sierra Club’s belief, that utilities should not make off-system sales from baseload power plants, which apparently was Sierra Club’s position in the Kansas City Power & Light (“KCPL”) docket. The Commission will recall that one of their points of opposition to KCPL’s Iatan 2 plant was that KCPL did not immediately need all of its capacity and that at times energy from the plant would be sold off-system. From that premise, they argued that the plant should not be built at all.

Compel, the Environmental Group Intervenors made vague claims about being able to “meet the claims of adverse parties,” suggesting that AmerenUE was seeking some kind of relief against them in this docket and that as a result, greater public disclosure of the IRP was necessary. Environmental Group Intervenors First Motion to Compel, ¶ 5. This claim lacks merit. Their counsel has had full and complete access to the entire IRP from the day it was filed, and as discussed further below even their designated internal representative could have had access to it for months. Given the limited nature of this docket, the Company seeks no relief against them, nor could it, and they do not, and never did, need a *public* version of the IRP to meet any claims against them.

13. They also previously made a vague Sunshine Law objection. First Motion to Compel ¶ 7. Their propensity to claim a Sunshine Law violation in Commission cases at every turn, even without being able to articulate the precise nature of the violation, seems clear based upon this challenge and a similar challenge made in Kansas City Power & Light Company’s Regulatory Plan Docket, Case No. EO-2005-0329, a challenge rejected just last week by Circuit Judge Thomas P. Brown, III. The Courts have also been clear in upholding the exemption in the Sunshine Law found in Section 610.021(14), RSMo. that specifically exempts information otherwise protected by law from public disclosure. *See Findings of Fact and Conclusions of Law and Judgment, Southwestern Bell Tele. Co. v. McClure et al.*, Case No. CV193-502cc, Page 9, Conclusion of Law 4 (June 21, 1993) (Brown, J.).

14. AmerenUE respectfully submits that the Environmental Group Intervenors’ continued attempt to force yet more public disclosure of the Company’s IRP is grounded in the Environmental Group Intervenors’ ultimate goal in this case: that is to create as much of a groundswell of public opposition as possible against any fossil fuel or nuclear power plant,

particularly a baseload power plant that it may be appropriate for AmerenUE to build in the future. They state as much in their Application to Intervene, where they state that their interest will be adversely affected “if AmerenUE builds *any* new power plants from non-renewable polluting sources such as coal or natural gas (emphasis added).” Their statement is not qualified, and it is not dependent upon the resource planning process. Rather, they oppose any resource to meet customers’ electric needs, if that resource has any potential to pollute, regardless of the feasibility or cost of the alternatives. Indeed, their views on this subject were also fully exposed in KCPL’s Regulatory Plan docket.⁵

15. In summary, the Company respectfully submits that the Environmental Group Intervenors care little about advancing the purpose of this docket. That purpose is contained in Chapter 22 of the Commission’s Rules, which contemplate two things. First, that the Staff must, and intervenors may, file reports with the Commission detailing any areas where they believe the Company has failed to comply with the more than 16 pages of IRP Rules contained in Chapter 22. 4 CSR 240-22.080(5) – (6). Second, that the Commission will then determine if the Company’s IRP *process* meets certain requirements, notably, did it consider demand side resources, did it use least-cost as a primary criterion, and did it analyze certain other considerations. 4 CSR 240-22.080(13); 22.010(2)(A) – (C).

16. The Environmental Group Intervenors’ lack of interest in advancing the purpose of this docket is evidenced by other facts, in addition to their stated purpose in intervening in this case and the positions they previously took in the KCPL case. First, apparently no one on their behalf, other than perhaps their attorney, has even read the entire IRP, although it was filed more

⁵ Case No. EO-2005-0329. The Company requests that the Commission take administrative notice of the Sierra Club’s on-the-record opposition to virtually any fossil fuel plant at any time, regardless of the feasibility or cost of other alternatives.

than three months ago. Second, they have rebuked the Company's efforts to give their designated *internal* representatives full access to the entire IRP, which of course would have allowed them to read it, evaluate it and, if desired, provide the Commission with a meaningful report as contemplated by the Commission's IRP rules. In this regard, more than two months ago, the undersigned counsel for AmerenUE personally advised the Environmental Group Intervenors' counsel that the Company would be willing to waive that part of the Commission's Protective Order that would preclude their internal experts from accessing Highly Confidential information simply upon the execution by them of the Commission's standard non-disclosure agreement. That same offer was made in a pleading filed by the Company on January 10, and was reiterated at the conference among the parties held on February 22. Without any explanation, they have refused to sign a non-disclosure agreement.

17. AmerenUE filed an appropriate public version of the IRP more than five weeks ago. To the extent material remains redacted in that public version, AmerenUE has done so in full compliance with the standards contained in the Commission's Protective Order. The Environmental Group Intervenors have not shown otherwise and no further disclosure should be required.

WHEREFORE, AmerenUE respectfully requests that the Commission deny the Environmental Group Intervenors' Motion to Compel Further Disclosures.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on the following parties on the 21st day of March, 2006.

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