

**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 Adjust Its Revenues for)
Electric Service)

File No. ER-2022-0337
Tracking No. YE-2023-0031

**SIERRA CLUB'S INITIAL POST-HEARING BRIEF
PUBLIC VERSION**

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Table of Contents

Table of Contents..... 1

I. Introduction..... 1

II. ISSUE 3: Ameren’s Plans for Labadie Involve Significant Risk. 3

III. ISSUE 3: The Commission Should Require that Ameren Identify Avoidable Costs at Its Coal Plants. 5

IV. ISSUE 3: CCN Regulation May Not Provide Sufficient Protection for Customers..... 6

V. ISSUE 4(E): The Commission Should Not Increase the Monthly Fixed Customer Charge for Any residential customer..... 8

VI. Relief Requested 8

I. Introduction

Sierra Club urges the Missouri Public Service Commission (“Commission”) to take a proactive approach toward requiring Ameren to study compliance and cost-saving options at its coal units, particularly with respect to Labadie where Ameren currently plans to operate units into the 2040s, despite the fact that all four units face significant compliance costs in addition to the significant ongoing maintenance costs. A major issue in this case had been whether customers should pay the full test year spending at the Rush Island plant. The plant is now only available to customers a few hours each month, under the agreement with MISO, and thus it would be unfair to customers to include the entire cost of the Rush Island plant in rates. This outcome could have been avoided had Ameren engaged in more-reasonable, transparent resource planning.

Ameren suggests that all of these issues should be punted to its business judgment as minimally reviewed in the Integrated Resource Planning (“IRP”) process. That process did not work for Rush Island, as evidenced by Staff’s pre-filed testimony in this case, which took the position that Rush Island should generally be excluded from rate base.¹ More generally, Integrated Resources Plans before this Commission are not a contested proceeding. There is no formal approval of the utility’s decision-making in the IRPs. Moreover, resource planning has a direct connection to rate cases, not just for major compliance decisions. Because a utility would reduce capital maintenance spending as it approaches a prudently selected retirement date, there is a direct connection between resource planning and rate cases. For example, a prudent utility would avoid upcoming environmental capital costs if a particular plant were slated for near-term retirement. In

¹ Exhibit No. 125, Rebuttal Testimony of Claire M. Eubanks on Behalf of Staff, p. 20 (“In this case, the reality is Rush Island is not fully available, not fully used and useful for service, in that there are limitations on its operations. Therefore, Staff recommends a rate base adjustment to reflect this reality. Staff also accounted for this reality in its fuel modeling.”).

this case, the Commission should require Ameren to identify capital spending that is avoidable with earlier retirement at these units. In the next five years, the Company plans to spend large amounts of capital merely to maintain the Labadie units.²

The Commission's Certificate of Convenience and Necessity ("CCN") regulation may not provide sufficient clarity for Ameren's customers. That regulation requires a utility to seek a CCN when a "retrofit" at a power plant "will result in a ten percent (10%) increase in rate base."³ Whether that CCN regulation will apply to the installation of Selective Catalytic Reduction ("SCR") or Flue Gas Desulfurization ("FGD") at Labadie depends on the cost of those projects and their impact on rate base, which cost will not be known to anyone outside of Ameren. (Not even those within Ameren will know the cost with any degree of certainty until after the retrofits are complete.) Thus, there may not be a transparent means for determining whether the CCN regulation applies to Labadie SCR or FGD decisions and the rule may not provide sufficient oversight of Ameren's resource planning. As a condition of approving the rate case expense related to Labadie, the Commission should explicitly require that Ameren file a CCN proceeding before Ameren decides to install new air pollution controls in response to a U.S. EPA regulation.

Last, the Commission should maintain the current residential fixed charge for all residential customers. Higher customer charges reduce a household's ability to lower their total bill through energy efficiency and conservation and are therefore harmful to customers, especially low-income or fixed-income customers.

² Exhibit 500(P), Comings Direct Testimony, pp. 6-7.

³ 20 CSR 4240-20.045.

II. ISSUE 3: Ameren's Plans for Labadie Involve Significant Risk.

Ameren is projecting to spend **** [REDACTED] **** at Labadie during the next five years, merely to maintain the units in operation.⁴ Sinking this additional capital maintenance into aging coal-burning units is risky for Ameren's customers, in part because additional capital spending beyond this maintenance capital will likely soon be required by environmental regulations. Combined with the hundreds of millions that will be required to comply with the Good Neighbor Plan (nitrogen oxides) and potentially hundreds of millions more to comply with a federal implementation plan for the Missouri haze rule (sulfur dioxide, nitrogen oxides, and PM), as well as additional costs for the updated Mercury Air Toxics Rule ("MATS"), Ameren's customers could likely afford several new power plants for the cost of maintaining Labadie just through this decade. Further, Ameren's current projected life for Labadie, and therefore the basis of its capital spending plans, was set during an IRP process that concluded before the enactment of the Inflation Reduction Act, which provides incentives for the construction of clean energy resources. Thus, the cost of maintaining Labadie has likely increased, while the cost of alternative generation may have decreased. Ameren's current capital spending plans at Labadie therefore present several risks to customers.

First, the Labadie units could soon require costly retrofits that would trigger a retirement decision. In particular, the Labadie units have high nitrogen oxide ("NO_x") emissions which are a precursor to ozone and therefore vulnerable to regulation.⁵ U.S. EPA's recently finalized Good Neighbor Plan will require expensive selective catalytic reduction ("SCR") controls or costly

⁴ Exhibit No. 500(C), Confidential Comings Direct Testimony, pp. 6-7.

⁵ Exhibit No. 500(P), Comings Direct Testimony, page 7, pp. 21-29.

purchase of emissions allowances at these units by 2025.⁶ Sierra Club witness Tyler Comings, using generic U.S. Energy Information Administration data, estimated the cost of each Labadie SCR at \$153 million per unit (\$612 million for the plant).⁷ Ameren stated in discovery that costs of SCR at each Labadie unit would be between \$100 and \$250 million per unit (between \$400 million and \$1 billion for the plant).⁸ Ameren’s Labadie coal units also face compliance risk under the regional haze rule, including the potential installation of FGDs, and under the updated MATS rule. EPA’s deadline to propose a federal regional haze plan or approve a state plan for Missouri is summer 2024.⁹ EPA could require FGD for Labadie units as part of such a haze plan.¹⁰ Ameren’s analysis shows that FGD technology at the Labadie units could cost between \$409 and \$446 million per unit.¹¹

Second, the projected lives, and therefore capital spending plans, for the four Labadie units were determined without reference to the expansion and extension of federal clean energy credits. In its 2020 triennial IRP, Ameren set the useful lives of Labadie units 1 and 2 at 2042 and determined units 3 and 4 would retire in 2036.¹² The passage of the Inflation Reduction Act in 2022 is a significant change to the electric utility industry, in large part by providing substantial federal tax credits for new clean energy resources—and this change in law has not yet been

⁶ Exhibit No. 500(P), Comings Direct Testimony, p. 21-25.

⁷ Exhibit No. 500(P), Comings Direct Testimony, p. 25.

⁸ Exhibit No. 500(P), Comings Direct Testimony, p. 25.

⁹ Exhibit No. 500(P), Comings Direct Testimony, p. 27.

¹⁰ Exhibit No. 500(P), Comings Direct Testimony, p. 27.

¹¹ Exhibit No. 500(P), Comings Direct Testimony, p. 26.

¹² Exhibit No. 500(P), Comings Direct Testimony, p. 9.

included in Ameren's resource planning.¹³ It's possible that the replacement for Labadie units is now more affordable than Ameren previously assumed.

III. ISSUE 3: The Commission Should Require that Ameren Identify Avoidable Costs at Its Coal Plants.

The Company should identify capital spending that is avoidable with earlier retirement at these units. As noted above, in the next five years, the Company plans to spend large amounts of capital merely to maintain Labadie units.¹⁴ But if any of these units were to retire earlier than currently planned, then there is potential to avoid some of these investments and therefore avoid associated rate increases. This matters for future rate cases because planned capital spending should change with the units' retirement year. Even the consideration of earlier retirement should lead to a re-evaluation of capital spending. That is because some planned spending may either be no longer necessary or no longer cost-effective with a shorter resource life.¹⁵ The identification of avoidable costs is therefore important for the Commission's determination of which costs to include in rate base as reasonable and prudent. Including avoidable costs in rates would prevent ratepayers from realizing these savings should the coal units retire earlier. There is no 'downside' to this recommendation other than Ameren not wanting to identify potential savings for its customers.

In rebuttal testimony,¹⁶ Ameren has suggested that the appropriate venue for reviewing its resource planning decision is in the Integrated Resource Plan process itself. The Commission has

¹³ Exhibit No. 500(P), Comings Direct Testimony, pp. 10-14.

¹⁴ Exhibit No. 500(C), Confidential Comings Direct Testimony, pp. 6-7.

¹⁵ Exhibit No. 500(P), Comings Direct Testimony, p. 14.

¹⁶ Exhibit No. 51, Rebuttal Testimony of Matt Michels on behalf of Ameren Missouri, pp. 1-5.

rejected that theory, in declining to make a substantive ruling on another utility's resource planning:

The Commission's determination of whether Ameren Missouri is in fact 'providing the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest' must wait for the appropriate rate case in which the Commission can consider all relevant factors.¹⁷

Thus, in Missouri, where the Commission does not generally rule on the substance of an IRP, rate cases are a primary venue for judging the prudence of a utility's power plant spending, including resource planning decisions. Further, Ameren's failure to appropriately plan around Rush Island shows the limitations of existing planning requirements.

The possibility of earlier retirement should compel Ameren to consider whether some capital spending could be avoided and the Commission could disallow those costs unless the Company shows that early retirement is not advantageous. In sum, the Commission should compel the Company to identify any "avoidable" spending at Sioux or Labadie units ahead of time so that it can determine whether or not to include these costs in rate base in a future rate case.

IV. ISSUE 3: CCN Regulation May Not Provide Sufficient Protection for Customers.

The Commission's Certificate of Convenience and Necessity ("CCN") regulation may not provide sufficient protection for Ameren's customers with respect to Labadie. That regulation requires a utility to seek a CCN when a "retrofit" at a power plant "will result in a ten percent (10%) increase in rate base."¹⁸ There are several problems for Ameren's customers.

First, the cost of retrofits and their impact on rate base is not known or knowable until after construction is complete. Ameren's estimates for the Labadie SCRs range widely, between \$400

¹⁷ File No. EO-2011-0271, Report and Order, Issued March 28, 2012, p. 10.

¹⁸ 20 CSR 4240-20.04.

million and \$1 billion for the plant, for example.¹⁹ Second, it is unclear if Ameren could avoid a CCN requirement by a “piecemeal” approach to resource planning, where significant spending for capital maintenance, \$400 million-\$1 billion for SCRs, and between \$409 and \$446 million per unit for FGD are each considered separately. This “piecemeal” approach serves customers poorly. A better approach would consider all costs and risks facing these units together, in a proceeding subject to Commission review.

The Commission has residual power to require CCN filings that it has not exercised. As the Supreme Court recognized in rejecting challenges to the CCN regulation:

[A]n agency does not divest itself of the authority granted to it by its enabling statutes merely by failing to exercise the full extent of that authority from time to time. Since 1913, the General Assembly has vested the PSC with ‘all powers necessary or proper to enable it to carry out fully and effectually’ the agency’s mission. [] As this Court has concluded, although convenience, expedience, and necessity are not proper considerations for determining whether the PSC has been granted a certain power, the PSC’s enabling ‘statutes are remedial in nature and should be liberally construed in order to effectuate the purpose for which they were enacted’[.]²⁰

The Court recognized that the Commission had more power to require CCNs than it had previously exercised. It follows that the Commission continues to have such residual authority. Here, it is reasonable to impose a CCN requirement for Labadie because i) Ameren failed to engage in reasonable resource planning at Rush Island; ii) Ameren’s Labadie units face significant environmental compliance risks; and iii) the existing CCN regulation and IRP process may not provide adequate scrutiny of Ameren’s plans.

¹⁹Exhibit No. 500(P), Comings Direct Testimony, p. 25.

²⁰ Matter of Amend. of Commission’s Rule Regarding Applications for Certificates of Convenience & Necessity, 618 S.W.3d 520, 525 (Mo. 2021), reh’g denied (Apr. 6, 2021) (internal citations omitted).

V. ISSUE 4(E): The Commission Should Not Increase the Monthly Fixed Customer Charge for Any residential customer

The Commission should not increase the monthly customer charge for any residential customer, regardless of rate plan. Higher customer charges reduce a household's ability to lower their total bill through energy efficiency and conservation and are therefore harmful to customers, especially low-income or fixed-income customers.²¹ High customer charges also penalize low energy users, including those living in smaller homes, such as multifamily apartments. In contrast, low customer charges incentivize energy efficiency and conservation, and they prevent low energy users from being unfairly overcharged for their usage patterns.²²

VI. Relief Requested

In Missouri, rate cases are a primary venue for protecting regulated customers from imprudent power plant and other resource planning decisions. As part of a 'no regrets' strategy for protecting captive Ameren customers from unreasonable costs, Sierra Club respectfully asks that the Commission grant the following relief:

- 1) Identify capital costs that would be avoided if any of the Labadie units were to retire before the end of this decade.
- 2) Order Ameren to seek a Certificate of Convenience and Necessity from this Commission before installing new air pollution control equipment at Labadie in response to the Good Neighbor Plan or other EPA regulation.
- 3) Maintain the fixed monthly charge for residential service at \$9 for all residential customers.

²¹ Exhibit No. 450, Rebuttal Testimony of James Owen on Behalf of Renew Missouri Advocates ("Owen Rebuttal Testimony"), p. 15.

²² Exhibit No. 450, Owen Rebuttal Testimony, p. 15.

For the reasons explained above, Sierra Club respectfully asks that the Commission grant the relief requested.

Respectfully submitted,

Date: May 5, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Sierra Club Initial Post-Hearing Brief was electronically filed on this date via the Missouri PSC's electronic filing system. Notice of this filing will be served upon all parties of record who have registered through this electronic filing system.

Date: May 5, 2023

/s/ Tony Mendoza
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