

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

In the Matter of Union Electric Company d/b/a            )            Case No. ER-2019-0335  
Ameren Missouri’s Tariffs to Decrease Its Revenues    )  
for Electric Service.    )

**AMEREN MISSOURI’S RESPONSE IN SIERRA CLUB’S STATEMENT  
OF DISCOVERY DISAGREEMENT OR CONCERN**

COMES NOW Union Electric Company d/b/a Ameren Missouri (the “Company” or “Ameren Missouri”) and for its response to the Sierra Club’s (“SC”) January 21, 2020 Statement of Discovery Disagreement or Concern, states as follows:

**Sierra Club’s First Complaint – a small extension of time.**

1. At approximately 10:00 pm (Central time) on Friday night, January 24, SC served its 7<sup>th</sup> set of data requests (“DRs”) consisting of more than six, single-spaced pages. This set of DRs contained 39 separate data requests, most with multiple subparts. Counting the subparts, SC posed 78 separate questions/requests.

2. Under the Procedural Order ordered in this case,<sup>1</sup> if one literally “counts” this set of DRs as having been served on January 24, responses were due 5 business days later on January 31, that is, unless notice was given indicating that more than 5 business days will be needed. See 4 CSR 4240-2.090(2)(E) and Paragraph 3(H)(viii) of the Procedural Order.

3. As Sierra Club admits, the Company timely gave SC notice of the need for additional time and the reasons for the notice. The notice indicated that just one more additional business day would be required.

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<sup>1</sup> *Order Setting Test Year and Adopting Procedural Schedule*, August 15, 2019.

4. As of the original due date, the Company had already provided more than half of the responses. As of the extended due date, the Company has provided all the remaining responses.

5. Neither the applicable rule nor the Procedural Order contemplates that a requesting party has an absolute right to get every single response within the original deadline; if they did, there would be no mechanism for providing the requisite notice. While the undersigned counsel appreciates the fact that it takes a certain amount of time to develop DRs (after, in this instance, receiving the Company's rebuttal testimony on January 21), the fact is that SC had three full days to review the rebuttal testimonies and develop the DRs. If it took three business days to simply come up with the DRs, the fact that answering providing answers to all 78 requests took one additional business day (for a total of six) is hardly surprising or unreasonable. The bottom line is that the Company's notice was fair, reasonable, and there was good cause for it. There has been no abuse of the discovery process; there has been no material prejudice to SC.

#### **Sierra Club's Second Complaint – DR 7.6**

6. Despite the Company's objection, the Company responded to the DR. This complaint is therefore moot.

#### **Sierra Club's Last Complaint - DR 8.20**

7. DR 8.20 is another in a series of Sierra Club attempts in this case to access privileged materials relating to work undertaken in defense of the pending federal lawsuit involving (primarily) the Rush Island Energy Center, and ongoing work being prepared in anticipation of the IRP case, the litigation of which will start when the triennial IRP is filed by October 1, 2020. SC's central proposal in this case is to disallow past capital expenditures made at three coal plants until certain economic justifications it says should be done are completed and

filed in a Commission docket. The proposed disallowance is grounded in SC's criticism of the economic analyses underlying the 2017 IRP. These criticisms were lodged by SC in the 2017 docket and in additional IRP-related filings by SC, most recently in the 2019 Special Contemporary Issues docket. The Company is and has been well-aware that SC is challenging the operation of its coal plants and clearly intends to do so in every docket it can, including in the upcoming IRP docket. To the extent coal plant economics are being examined, those examinations are all being done for and in anticipation of litigating the 2020 IRP docket. The Company does agree, however, that it should produce a privilege log and is in the process of preparing one.

WHEREFORE, the Company submits this response.

/s/ James B. Lowery  
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**Attorneys for Union Electric Company  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via e-mail on counsel for the parties of record in this case on the 4th day of February, 2020.

/s/ James B. Lowery\_\_\_\_\_

James B. Lowery