BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re: Union Electric Company's	)	
2005 Utility Resource Filing pursuant to	)	
4 CSR 240 – Chapter 22	)	Case No. EO-2006-0240
	)	

RESPONSE OF UNION ELECTRIC COMPANY D/B/A AMERENUE TO MOTION TO COMPEL DISCLOSURE FILED BY INTERVENORS SIERRA CLUB, MISSOURI COALITION FOR THE ENVIRONMENT, MID-MISSOURI PEACEWORKS, AND ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW[1]

COMES NOW Union Electric Company d/b/a AmerenUE (the 'Company" or "AmerenUE"), and, pursuant to the terms of the Commission's protective order entered in this case, files its response to the "Motion to Compel" filed by the Environmental Group Intervenors. In this regard, AmerenUE states as follows.

SUMMARY OF AMERENUE'S RESPONSE

1. The Environmental Group Intervenors' request that the Commission revoke its Protective Order will, if the request is granted, harm the Company and its ratepayers. The Company's integrated resource filing ("IRP") made on December 5, 2005 contains, among other things, highly confidential information relating to the competitive generation and power markets, commodity fuels markets, and emission allowance trading markets in which the Company must operate in order to provide safe, adequate and reliable utility service at just and reasonable rates. It also contains key strategic information and private technical, financial and business information developed by the Company in order to make the IRP filing at a cost in excess of $1 million. This confidential and proprietary information directly and indirectly affects the Company's cost of service and, consequently, its rates. Its disclosure could give Company suppliers, potential counterparties in long-term power supply sales and purchase agreements and customers with operations in multiple states a competitive advantage (and would produce a consequent disadvantage for the Company) which could raise the cost of service and could therefore raise rates.

2. The Environmental Group Intervenors charge that the Protective Order, as presently applied to them, may hinder their ability to participate in the IRP docket and indeed

[1] These intervenors will be refered to collectively herein as the "Environmental Group Intervenors."

might impact their Due Process rights. *Motion to Compel*, ¶ 5 This is because the Commission's standard protective order, entered in this case, restricts access to highly confidential information only to *outside* experts and consultants. The Company understands, in particular given the nature of the organizations that comprise the Environmental Group Intervenors and the unique nature of the Commission's IRP review process, why this restriction could perhaps be too limiting in this particular instance. The Company is therefore willing to agree in this case to an exception to the ordinary rule limiting access to highly confidential information to only outside experts or consultants, with the following conditions:

> (a) Each intervenor (other than those who are ineligible, as delineated below) may designate one internal representative who will, for purposes of the Protective Order, be treated as an outside expert or consultant (and shall be fully bound by the Protective Order as if he or she were an outside expert or consultant), who will be provided access to the entire IRP upon the filing by such person of the Nondisclosure Agreement appended to the Protective Order as Appendix A; and
>
> (b) An intervenor is not eligible for the access described in condition (a) if the intervenor or its affiliate or subsidiary is now, or is reasonably expected in the future, to be a power purchaser of power sold off-system by AmerenUE, or is now or is reasonably expected to be in the future, a supplier of labor, materials, services, supplies, power, fuel, transportation, or any other input of any kind that is or may be utilized by AmerenUE to meet its resource needs.[2]

3. Although it is highly impractical, unduly burdensome, and unjustified to redact the highly confidential and proprietary information contained in the entire (more than 3,000 page) IRP filing, the Company recognizes the importance, to the extent practical and reasonable, of making meaningful information about the IRP filing available to the public. Consequently, the Company proposes to refile both the Executive Summary and the more than 200 page Integrated Resource Analysis section ("IRA") of the IRP as a public document, after appropriate redaction of highly confidential and proprietary information. This will provide the most meaningful and substantive part of the IRP filing to the public, while protecting the Company and ratepayers from harm. The remaining approximately 2,800 pages consist largely of "back-up" data and analysis that merely supports the IRA. Moreover, counsel and outside experts or consultants for all intervenors have, at this time, access to the entire IRP, and a designated internal representative of eligible intervenors, as described above also has current access to the entire IRP.

[2] The Company has already advised counsel for the Environmental Group Intervenors that his designated representative will be allowed access to the entire IRP for the first of four scheduled weekly meetings with Staff and other intervenors respecting the IRP, the first of which will occur tomorrow, January 11, 2006, if a Nondisclosure Agreement is signed.

ARGUMENT

I. *Introduction.*

The Environmental Group Intervenors ask this Commission to take the radical step of revoking the Protective Order the Commission has already seen fit to adopt, apparently unaware[3] of the harm to ratepayers and to the Company that would result from such a precipitous action. The Environmental Group Intervenors appear unaware that the Company *and its ratepayers* could be harmed if groups such as the Company's labor, fuel, transportation, and other suppliers, consultants and engineers who may want to do business with the Company in relation to its future resource needs, as well as entities with whom the Company competes in the wholesale energy markets when it buys electricity to meet its load or sells electricity off-system, are given access to AmerenUE's comprehensive IRP.

In seeking to make the IRP public, the Environmental Group Intervenors make three principal arguments.

First, they argue that because AmerenUE is a "regulated" utility with a regulated monopoly for the *energy delivery side* of its business, AmerenUE "cannot rely on the exigencies of a deregulated market that does not exist in Missouri" in support of its request that the IRP be kept confidential. *Motion to Compel*, ¶ 11. What the Environmental Group Intervenors apparently do not understand is that the Company must *compete* in a number of markets, both on the supply and demand side of its business, that affect rates paid by ratepayers. Disclosure of the information in the IRP would harm AmerenUE's ability to compete in those markets to the ultimate harm of AmerenUE ratepayers.

[3] Or perhaps worse, indifferent to.

Second, the Environmental Group Intervenors complain that they, apparently unlike the dozens if not hundreds of other intervenors in AmerenUE cases before the Commission over the past several decades, cannot obtain adequate legal representation if they are held to the same confidentiality provisions as all of those other intervenors. *Motion to Compel*, ¶ 5. In particular, they complain that limiting highly confidential and proprietary information in the IRP to outside experts and employee-consultants is too limiting, for them. Id. With regard to this second point, AmerenUE's agreement to allow an internal representative of eligible intervenors (including the Environmental Group Intervenors) access to the entire IRP upon execution of the appropriate Nondisclosure Agreement fully addresses this concern.

Third, the Environmental Group Intervenors argue that the Commission may be violating the Sunshine Law. *Motion to Compel*, ¶ 6. The Environmental Group Intervenors misapply the law, and the Commission has specifically rejected these same arguments before.

II. *Release of the Highly Confidential and Proprietary Information in the IRP Would Harm the Company and Ratepayers.*

As the Commission is well aware, rates are a function of two principal components, the costs incurred by the utility to provide adequate and reliable service, and a sum necessary to provide a reasonable return on the utility's shareholders' investment. The former component depends in part on the cost of fuel and purchased power needed to fire the utility's generation or to otherwise acquire the power customers need, and also on the ability of the utility to sell energy not needed during times of peak load into the wholesale markets. Those sales can have an important impact on lowering the utility's overall cost of service and, consequently, the rates paid by customers.

In order to acquire the inputs necessary to generate electricity, or to buy it from the market when necessary to serve load, the utility must *compete* in the wholesale generation and energy markets and also in the labor, materials, and services markets that influence the cost of generating or purchasing electricity. Power marketers, those with power plants for sale, contractors, coal and natural gas suppliers, transportation suppliers, and engineering firms, to name only a few of the groups at issue, would all gain competitive advantages *contrary to the interest of the Company and ratepayers* if the IRP were made public or if those groups were to otherwise gain access to information in the IRP outside the normal parameters prescribed in the Protective Order. Imagine a potential power marketer or owner of a power plant that might be for sale knowing AmerenUE's capacity position, the results of past RFPs for energy or capacity, AmerenUE's forward view of commodity prices, key siting considerations for possible new generating units, or the relative ranking of various resource alternatives. All of that information is in the IRP in various places and forms. Public release of that kind of information is likely to increase AmerenUE's supply-side costs by placing AmerenUE at a competitive disadvantage in negotiating supply contracts, power plant purchases, and acquiring labor, materials, supplies or services AmerenUE might need to build a power plant, or transmission, or other necessary assets. It is likely to increase AmerenUE's costs of purchasing power when needed to serve load. As previously noted, if those costs go up rates would also increase.[4]

On the other side of the equation, if power purchasers know information such as AmerenUE's load duration curve, its capacity position, and its production costs (again, all of this

[4] In summary, among other things, the IRP contains highly confidential and proprietary information about AmerenUE's forward view of electric wholesale market prices, AmerenUE's forward view of emission allowance prices, AmerenUE's view of fuel commodity prices, AmerenUE's view of fuel transportation costs, AmerenUE's view of the future of environmental compliance regulations and options to meet potential regulations, AmerenUE's assessment of optimum siting locations for future powerplants, AmerenUE's capacity position for each year of the 20-year planning period, and AmerenUE's alternative resource plan options.

information is in the IRP in various places and forms), those purchasers are in a much better position to negotiate better prices with AmerenUE and to otherwise reduce the price at which AmerenUE can make off-system sales. Consequently, the off-system sales margins, which today reduce AmerenUE's cost of service and thus its rates, would also be reduced resulting in an effective increase in AmerenUE's costs of service and its rates.

The Environmental Group Intervenors also suggest that information about demand side resources is not confidential. To the contrary, the demand side analyses, thought processes, and plans contained in the IRP give a clear indication of the specific type of energy efficiency and demand response options that, based on preliminary screening analysis work, appear to be cost effective resource options for AmerenUE. To the extent that there are a limited number of cost effective options, potential vendors and/or energy service companies that may bid on supplying AmerenUE with these resource options may bid opportunistically hoping to capitalize on the fact that AmerenUE has limited cost effective options It is contrary to the interest of ratepayers (who ultimately would pay the costs of such programs and the fees of such service providers) to allow potential bidders access to this information.

III. *AmerenUE's Proposal to Allow a Designated Representative of Eligible Intervenors to Access the Entire IRP Fairly Addresses the Environmental Group Intervenors' Concerns.*

The Protective Order, as written today, allows counsel for the Environmental Group Intervenors and outside testifying and consulting experts full access to the IRP. Their counsel need not sign anything, and the experts need only sign the Commission-prescribed form of Nondisclosure Agreement attached as Appendix A to the Protective Order. This is a process followed for years by the Commission. The process has worked well and balances the need of a party to access information about the case against the need of parties submitting information in a

case to protect their own interests and as here, the interests of ratepayers, in keeping highly confidential or proprietary information out of the hands of the general public and out of the hands of a broad array of people working for or associated with a party who do not have a compelling need for access to the information.

This process is designed to prevent the very kind of harm to ratepayers and the Company discussed in Section II above. However, the Company recognizes, particularly in this somewhat unique IRP docket, that there are certain intervenors for which some of the concerns addressed by the Commission's standard protective order can be addressed differently. Consequently, the Company is willing to agree to an exception in this case to the ordinary rule limiting highly confidential information to only outside experts or consultants with the conditions set forth in the Summary of AmerenUE Response starting on page 1 of this Response.

IV. *The Commission's Protective Order Does not Violate or Threaten to Violate the Sunshine Law.*

The Company believes it has adequately and fairly addressed the Environmental Group Intervenors' concerns, but believes a brief response to their reference to the Sunshine Law[5] is warranted. This Commission has previously and consistently ruled that Section 386.480, RSMo[6] protects any information submitted to or filed with the Commission from public disclosure unless ordered otherwise by the Commission. *See, e.g. In re: Southwestern Bell*, 6 Mo. PSC 3d 493 (Sept. 16, 1997); Commission's General Counsel Opinion No. 83-1 (Dec. 13, 1982). This statute is critically important to ensure the free flow of information between utilities and the

[5] Sections 610.010 – 610.035, RSMo.
[6] Section 386.480, RSMo provides in pertinent part as follows: "*No information* furnished to the commission by a . . . public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMO, shall be open to public inspection or made public except on order of the commission . . ." (emphasis added).

Commission, without jeopardizing utility and ratepayer interests. *See Gen. Counsel Op. No. 83-1 (*"The free flow of such information on an expeditious basis is essential . . . and speedy access to information of a sensitive nature would be `impaired' if subject to full disclosure"). As the above-cited decision and General Counsel's Opinion also discuss in detail, Section 386.480, RSMo constitutes a *specific closure* of such information as required by law, thus exempting such information from disclosure under the Sunshine Law, unless otherwise ordered by the Commission.[7] *See* Section 610.021(14) (exempting public records required to be closed by law from disclosure under the Sunshine Law).

The Environmental Group Intervenors cite Section 386.380.1, RSMo, apparently to suggest that it automatically opens every piece of information in the Commission's possession to the public without regard to Section 386.480, RSMo. The Commission rejected that very point in *In re: Southwestern Bell*, stating that the term "public records" used in Section 386.380 is *not* synonymous with the term "open public records." Otherwise, Section 386.480, RSMo. would be a nullity, a result that the Commission has found makes no sense and contravenes the intent of the Legislature. *See Southwestern Bell, supra.* The Commission has of course conducted hundreds if not thousands of proceedings using the same basic protective order terms that are also contained in the Protective Order entered in this case, and there has not yet been any ruling finding that the Commission's practice in this regard violates or threatens to violate the Sunshine Law. There has never been any such ruling because there is no Sunshine Law violation.

IV. *The Company is Willing to Prepare and File a Public Version of the Most Important Part of the IRP.*

[7] Or ordered opened during the hearing process by the Commission or a Commissioner.

The Company believes it is appropriate to treat the entire (more than 3,000 page) IRP filing as highly confidential or proprietary. The very nature of the IRP filing, and the nearly 17 pages of detailed filing requirements prescribed by the Commission's IRP rules, means that confidential information is dispersed throughout the IRP. Not only would it be impractical and unduly burdensome to redact more than 3,000 pages but it would not produce much, if any, true public benefit because large amounts of information would have to be redacted leaving thousands of pages of information that would be difficult to read and follow, even if a redacted version of the entire 3,000 pages was publicly available.

The central and important substantive core of the IRP filing is reflected in the seven-page Executive Summary and the approximately 200 page IRA. The IRA provides substantial information about the supply-side, demand-side, load analysis and forecasting and risk and uncertainty analyses in the filing. It explains the process used in the analysis, the assumptions that underlie it, describes the various resources under consideration, provides analyses results, and provides a discussion of how the plan would be implemented. The remaining 15 documents contain the voluminous "back-up" support for the information in the IRA. The Executive Summary and IRA can be redacted, and a public version of them re-filed in a way that will provide meaningful public information about the Company's IRP. Indeed, most of the meaningful information of interest to the public (as opposed to more technical back-up data in the other documents which would be of primary interest to intervenors and their experts and consultants as opposed to the public in general) is contained in these documents.

Consequently, the Company proposes to prepare a public version of both the Executive Summary and the IRA and to refile it as a public document within 45 days after the filing of this Response. As noted above, this will not impede the Environmental Group Intervenors from

appropriate participation in this docket or in the upcoming series of weekly meetings, which commence tomorrow, because of the Company's agreement to allow a designated representative access to the entire IRP upon execution of the appropriate Nondisclosure Agreement.

One final point bears noting. As the Commission's Staff itself has recognized, the current IRP rules, written more than 13 years ago, were written at a time when power and generation markets existed in a much different form. As a result, the nature and extent of the information provided pursuant to the IRP rules at that time did not present nearly the same level of confidentiality concerns as presented today.[8] At bottom, the existing IRP rules require a massive amount of data and analyses, which includes substantial highly confidential and proprietary information dispersed throughout. At the same time, the current IRP rules do not make any provision to address how the general public can access reasonable information about the utility's resource planning, without jeopardizing utility or ratepayer interests. The Company respectfully submits that its proposal to file a public version of the Executive Summary and IRA will, for purposes of this case, provide the public the information it needs in this particular case, but cites this problem as another example of the need for the Commission to finish the collaborative process it began at its May 20, 2005 Roundtable Workshop and to develop modernized and appropriate resource planning rules that reflect today's electric utility industry.

WHEREFORE, the Company prays that this Commission deny the Environmental Group Intervenors' Motion to Compel, adopt as modifications to the Protective Order entered in this case the additional access to highly confidential information afforded a designated representative

[8] Other governmental agencies have recognized this and updated their rules, as evidenced by changes made by the United States Energy Information Administration ("EIA") with regard to its 411 report. The EIA recognizes the extremely competitive electric generation industry and now provides for all EIA-411 public reporting to be done on an *aggregate or regional basis* so that no individual investor owned utility can be identified.

of certain eligible intervenors as described in this Response, and allow the Company to file a public version of the Executive Summary and the IRA within 45 days of this filing, with the highly confidential and proprietary information contained therein redacted therefrom.

Dated: January 10, 2006.

Respectfully Submitted,

SMITH LEWIS, LLP

/s/ James B. Lowery

James B. Lowery, #40503
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com

Attorneys for Union Electric Company d/b/a AmerenUE

Thomas M. Byrne, # 33340
Managing Assoc. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
(314) 554-2514 (phone)
(314) 554-4014 (fax)
tbyrne@ameren.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on the following parties on the 10th day of January, 2006.

Office of the General Counsel
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
Jefferson City, MO 65101
gencounsel@psc.state.mo.us

Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
Jefferson City, MO 65101
opcservice@ded.state.mo.us

Henry B. Robertson, Esq.
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, MO 63101
hrobertson@greatriverslaw.org

Shelley Woods, Esq.
Missouri Dept. of Nat'l Resources
P.O. Box 899
Jefferson City, MO 65102
Shelley.woods@ago.mo.gov

/s/**James B. Lowery**
James B. Lowery