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 Decrease Its Revenues for Electric Service	))))	File No. ER-2019-0335

SIERRA CLUB STATEMENT OF DISCOVERY DISAGREEMENT OR CONCERN

Sierra Club submits this Statement of Discovery Disagreement or Concern, and states as follows:

1. On August 15, 2019, the Commission issued an Order Setting Test Year and Adopting Procedural Schedule ("Order"). The Order set a Discovery Conference for November 13, 2019.

2. The Order also provides in paragraph 3(K) that:

> Not less than two business days before each discovery conference, any party that has a discovery disagreement or concern involving another party shall file a brief statement describing that disagreement or concern and identifying any other parties involved. Such statement does not need to be a formal motion to compel. Any party may attend a discovery conference, but only those parties involved in an identified discovery disagreement or concern must attend. If the parties do not identify any discovery disagreements or concerns before the scheduled conference, the presiding officer may cancel the conference.

3. Sierra Club is filing this Statement to identify two discovery disagreements or concerns regarding Union Electric Company d/b/a Ameren Missouri's ("Ameren Missouri" or the "Company") responses to certain discovery requests submitted by Sierra Club.

4. First, in response to each set of discovery submitted by Sierra Club to Ameren Missouri, the Company has purported to give itself an extension for the discovery response deadline. See Ameren Missouri's objection letters to Sierra Club set 1 and set 2, respectively, Attachment 1 and Attachment 2. While the Company has agreed to provide documents on a rolling basis, limiting the procedural harm to Sierra Club somewhat, the practice of unjustified

extensions for responses that should be routine in an electric rate case may impact Sierra Club's ability to complete its review of the Company's case by the testimony filing deadlines. (In the Company's response to Sierra Club's first set of discovery, the Company purported to offer a series of relevance objections, which the Company has now withdrawn.)

5. Second, Ameren Missouri has refused to provide any response to Sierra Club discovery request 2.50, attached as Attachment 3. Through this discovery question, Sierra Club seeks information about the reasonableness of continuing to operate the Labadie and Rush Island power plants in light of a federal court order requiring installation of pollution controls at those plants by a date certain. Ameren has objected to this discovery question based on i) its assertion that such information is not reasonably calculated to lead to the discovery of admissible evidence and ii) attorney-client and work product privilege grounds:

> The Company objects to DR No. 2.50 to the extent it seeks information protected by the attorney-client or work product privileges, and objects because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

The first objection appears to be incorrect and the second objection is, at best, unsupported.

6. First, the question of whether the Company has evaluated the reasonableness of continued operation of these power plants is a yes-or-no question that could lead to the discovery of admissible evidence. If the Company has not evaluated such reasonableness at all, the parties may have prudence arguments about the Company's actions. If the Company has evaluated the reasonableness of such continued operation, then that evaluation information could lead to the discovery of admissible information. Without waiving any potential relevance arguments, if the available information shows that customers would benefit if either Rush Island or Labadie were retired on the compliance dates, then the Company would need to limit capital maintenance spending at such units immediately. In other words, it would be unreasonable to charge

customers for repair or maintenance projects that are not needed to keep the unit(s) online up through the retirement date. Since the Company is seeking Test Year capital maintenance costs in this case, this information is plainly of potential relevance to this case.

7. Second, the attorney-client and work product privilege assertions are not supported by a privilege log and thus are difficult to evaluate without any offered support. Rule 26(B)(5) provides:

> Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

The Company has not provided a privilege log. Nor has it stated what documents exist that relate to the reasonableness of continuing to operate Rush Island and Labadie in the light of the court order. It may be, for example, that the Company has estimated the compliance costs facing Rush Island and Labadie, and, if so, that information would likely be relevant and not subject to any valid privilege claims. In any event, at a minimum, and without conceding any privilege arguments, the Company should produce a privilege log that would allow Sierra Club and perhaps other parties to assess the applicability of the privilege claims.

8. Thus, Sierra Club submits this Statement in advance of the November 13, 2019 discovery conference.

/s/ Henry B. Robertson

Henry B. Robertson
Great Rivers Environmental Law Center
319 N. 4th St., Suite 800
St Louis, MO 63102
314-231-4181
Fax 314-231-4184
hrobertson@greatriverslaw.org

Tony Mendoza
Senior Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
415-977-5589
Fax: 510-208-3140
tony.mendoza@sierraclub.org

Josh Smith
Senior Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
415-977-5560
Fax: 510-208-3140
joshua.smith@sierraclub.org

Counsel for Sierra Club

Dated: November 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 8th day of November, 2019, with notice of the same being sent to all counsel of record.

/s/ Tony Mendoza

Attachment 1

WILLIAM JAY POWELL
JOHN L. ROARK
COLLY J. DURLEY
JAMES B. LOWERY
MICHAEL R. TRIPP
PHEBE LA MAR
SARAH E. GIBONEY
AMANDA ALLEN MILLER
DANIEL G. BECKETT

OF COUNSEL
BRUCE H. BECKETT

SMITH LEWIS, LLP
ATTORNEYS AT LAW

P.O. BOX 918
COLUMBIA, MISSOURI 65205-0918
•••
CITY CENTRE
111 SOUTH NINTH STREET, SUITE 200
COLUMBIA, MISSOURI 65201-4891
(573) 443-3141 • Fax (573) 442-6686

BETHANY R. FINDLEY
MATTHEW R. QUETSCH
JACKIE L. RODGERS, JR.
JOHN N. ROARK, JR.

ROBERT C. SMITH (1923-2016)
RAYMOND C. LEWIS, JR. (1926-2004)

LEGAL NURSE CONSULTANT
JENNY BECKETT, RN

October 4, 2019

Mr. Henry Robertson
Great Rivers Environmental Law Center
319 N. Fourth Street, Suite 800
St. Louis, MO 63102

Re: Sierra Club's First Set of Data Requests

Dear Henry:

This letter contains the Company's objections to some of the DRs in the above set and with respect to the entire set, the Company objects to the "General Instructions" and "Other Instructions" that preface the DRs because the same are not authorized by the Missouri Rules of Civil Procedure which governs the terms upon which discovery may be had in Commission cases.

With respect to DRs to which responses will be provided and for which information for each of the Company's "coal units" is requested, the Company objects to providing by unit data to the extent doing so seeks to require the Company to prepare analyses or otherwise develop data or information that does not exist or is not kept by the Company in the form requested on the grounds that any such request is overly broad, unduly burdensome and exceeds the scope of authorized discovery by not seeking existing facts, documents, or information. Subject to the foregoing objection, if a request for data for "coal units" is intended to seek per unit information the same will be provided if it is kept by the Company on a per unit basis.

The Company objects to subparts b and c of DR No. 1.6 because they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

The Company objects to DR Nos. 1.7, 1.8, 1.10, 1.13, 1.16, 1.17, and 1.18 because they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and further they are overly broad and unduly burdensome.

Given the details and breadth of the information sought for those DRs for which responses will be provided, including but not limited to DR No. 1.21, the Company will require up to an additional two weeks (to October 29, 2019) to respond. With respect to DR No. 1.21, the Company also objects to the extent doing so seeks to require the Company to prepare

analyses or otherwise develop data or information that does not exist or is not kept by the Company in the form requested on the grounds that any such request is overly broad, unduly burdensome and exceeds the scope of authorized discovery by not seeking existing facts, documents, or information. Subject to the foregoing objection, a response will be provided to DR No. 1.21.

Sincerely,

/s/ James B. Lowery

James B. Lowery

Cc: Geri Best, Carolyn Mora, Yvette Scott, Wendy Tatro

Attachment 2

WILLIAM JAY POWELL
JOHN L. ROARK
COLLY J. DURLEY
JAMES B. LOWERY
MICHAEL R. TRIPP
PHEBE LA MAR
SARAH E. GIBONEY
AMANDA ALLEN MILLER
DANIEL G. BECKETT

OF COUNSEL
BRUCE H. BECKETT

SMITH LEWIS, LLP
ATTORNEYS AT LAW

P.O. BOX 918
COLUMBIA, MISSOURI 65205-0918
•••
CITY CENTRE
111 SOUTH NINTH STREET, SUITE 200
COLUMBIA, MISSOURI 65201-4891
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LEGAL NURSE CONSULTANT
JENNY BECKETT, RN

November 4, 2019

Mr. Henry Robertson
Great Rivers Environmental Law Center
319 N. Fourth Street, Suite 800
St. Louis, MO 63102

Re: Sierra Club's Second Set of Data Requests

Dear Henry:

This letter contains the Company's objections to some of the DRs in the above set and with respect to the entire set, the Company objects to the "General Instructions" and "Other Instructions" that preface the DRs because the same are not authorized by the Missouri Rules of Civil Procedure which governs the terms upon which discovery may be had in Commission cases.

The Company objects to subparts c and d of DR No. 2.9 because they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and are overly broad and unduly burdensome because they are not limited in time. Subject to the foregoing objections, a response will be provided.

The Company objects to DR No. 2.20 because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome because they are not limited in time. The Company also objects to this DR to the extent it seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which would render it beyond the proper scope of discovery. Subject to the foregoing objections, a response will be provided.

The Company objects to DR No. 2.33 to the extent it seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which would render it beyond the proper scope of discovery. Subject to the foregoing objections, a response will be provided.

The Company objects to DR No. 2.34 because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is overly broad and

unduly burdensome because they are not limited in time, and further because some of the information sought is equally available to Sierra Club. The Company also objects to this DR to the extent it seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which would render it beyond the proper scope of discovery. Subject to the foregoing objections, a response will be provided.

The Company objects to DR No. 2.47 because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome because it is not limited in time. Subject to the foregoing objections, a response will be provided.

The Company also objects to DR No. 2.48 to the extent it seeks to require Ameren Missouri to engage in research, to compile data, and to perform analyses rather than seeking the discovery of existing facts or data, which would render it beyond the proper scope of discovery. Subject to the foregoing objections, a response will be provided.

The Company objects to DR No. 2.50 to the extent it seeks information protected by the attorney-client or work product privileges, and objects because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

The Company will also require up to an additional week, to November 20, 2019, to respond to these 50 DRs.

Sincerely,

/s/ James B. Lowery

James B. Lowery

Cc: Geri Best, Carolyn Mora, Yvette Scott, Wendy Tatro

Attachment 3

File No. ER-2019-0335

Excerpt from Sierra Club's Second Set of Data Requests to Ameren Missouri

2.50 Refer to the Judgment issued on September 30, 2019, in U.S. District Court Case No. 4: 11 CV 77 RWS requiring that Ameren propose wet flue-gas desulfurization at its Rush Island Energy Center and install a pollution control technology as effective as dry sorbent injection at its Labadie Energy Center.

a. Has the Company evaluated the reasonableness of continuing to invest in the Rush Island Energy Center in light of the requirement that it install wet flue-gas desulfurization in order to keep operating the plant? If so, provide all reports and workpapers associated with such evaluation.

b. Has the Company evaluated the reasonableness of continuing to invest in the Labadie Energy Center in light of the requirement that it install dry sorbent injection or similar technology within three years in order to keep operating the plant? If so, provide all reports and workpapers associated with such evaluation.