

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

In the Matter of a Proposed Rulemaking	)	
Regarding Revision of the Commission's	)	Case No. EX-2010-0254
Chapter 22 Electric Utility Resource	)	
Planning Rules.	)	

**COMMENTS OF AMEREN MISSOURI**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or the Company) and provides its Comments on the Missouri Public Service Commission's (Commission) Proposed Rules for 4 CSR 240-22, published in the *Missouri Register* on December 1, 2010. The Commission promulgated these proposed integrated resource planning (IRP) rules in order to, as explained in its order scheduling the workshops that preceded this rulemaking, require "...Missouri's investor-owned electric utilities to consider and analyze their resource plans, resource acquisition strategies, and investment decisions with the intent to provide safe, reliable and efficient energy services to the public at just and reasonable rates."<sup>1</sup>

**General Comments**

1. Ameren Missouri, along with the other Missouri electric utilities, Commission Staff (Staff) and other participants, spent a great deal of time in workshops, held in File No. EW-2009-0412, working on revisions to the Commission's IRP rules.

2. During the workshops, it became apparent that there were two different schools of thought on the level of detail the utility resource planning rules should contain and whether the rule should focus on process or upon the end result. The rules sent to the

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<sup>1</sup> File No. EW-2009-0412, Notice of Repository File Regarding the Chapter 22 Electric Utility Resource Planning Revisions Workshops, May 20, 2009.

Secretary of State's office for publication are a highly detailed checklist and retain the focus on process rather than on the plan, which is the end result. Ameren Missouri believes the rules should be less process oriented, and instead allow the utility, with the input of stakeholders, to adapt to the changing planning environment to reach a more robust plan.

3. Ameren Missouri's participation in these workshops should not be read as support for the proposed rules which are currently before the Commission. However, part of Ameren Missouri's participation at the workshops included work on and support of the Missouri Energy Development Association (MEDA) proposed IRP rules (MEDA rules). *See attached.* Ameren Missouri believes the Commission should reject the proposed rules and instead adopt the MEDA rules.

#### **Legal Deficiency**

4. There is no doubt that adequate resource planning should be undertaken by Missouri utilities, whether or not the Commission has rules specifying how that planning should be done. What is not clear, however, is what level of detail should be mandated by the Commission's IRP rules and where the level of detail crosses over into the management of the utility. Ameren Missouri believes the proposed rules go beyond the Commission's legal authority.

5. Missouri law gives the Commission broad authority to regulate utilities.<sup>2</sup> This authority, however, is not without limitation. Missouri courts have repeatedly held that the Commission is "purely a creature of statute" and that its "powers are limited to those conferred by the statutes, either expressly or by clear implication as necessary to

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<sup>2</sup> 386.040 RSMo.

carry out the powers specifically granted.”<sup>3</sup> Further, the courts have said that “Neither convenience, expediency, or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by statute.”<sup>4</sup>

6. Specifically, management of the utility is reserved to the utility and not to the Commission. “But it must be kept in mind that the commission’s authority to regulate does not include the right to dictate the manner in which the company shall conduct its business. The company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing, it does not injuriously affect the public. The customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service.”<sup>5</sup>

7. Over time, the delineation between Commission and utility management roles has been upheld. “The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.”<sup>6</sup> “The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. These powers do not, however, clothe the Commission with the general power of management incident to ownership.”<sup>7</sup>

8. When the current IRP rules were initially adopted in 1992, the Commission stated, “The commission is of the belief that the [IRP] rules should be put in

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<sup>3</sup> *State ex rel. Utility Consumers Council v. PSC*, 585 S.W. 2d 41, 49 (MO 1979); *State ex rel. City of West Plains v. PSC*, 310 S.W.2d 925, 928 (Mo. Banc. 1958).

<sup>4</sup> *Utility Consumers Council*, 585 S.W.2d at 49 (citing *State ex rel. Kansas City v. PSC*, 257 S.W.2d 462 (Mo. Banc. 1923.))

<sup>5</sup> *State ex rel. St. Joseph v PSC*, 30 S.W.2d 8, 14 (Mo. Banc 1930).

<sup>6</sup> *State ex rel. Harline v. PSC*, 343 S.W. 2d 177 (Mo. App. 1960).

<sup>7</sup> *State ex rel. PSC v. Bonacker*, 906 S.W. 2d 896 (Mo. App. 1995). citing Harline.

place to promote proper, accurate, and increasingly necessary long-range planning...but not to dictate either the strategic decision itself or the decision-making process.”<sup>8</sup>

9. Ameren Missouri believes this is the appropriate manner in which to view IRP rules. It is appropriate for the Commission to ensure that the utilities that it regulates are properly planning so that they can provide sufficient and efficient service to their customers. It is not appropriate for the Commission to tell utility management the exact process it must use in undertaking that planning. This approach, however, necessitates Commission rejection of the proposed IRP rules.

### **Reasons the MEDA Rules Should be Adopted**

10. The MEDA rules are designed to move beyond the “checklist” approach to an approach where the discussions are about overall quality and results (i.e. the plan). Ameren Missouri has the ability to perform all of the analysis required by the proposed IRP rules (cost-effectiveness aside), but should that question be the criteria by which this Commission decides to adopt a rule? Ameren Missouri believes it is not the appropriate criteria. The checklist approach assigns equal value to every box on the list and inevitably leads to more and more boxes being added, as evidenced by the rulemaking up to this point. However, all parties need to prioritize resources and the proposed IRP rules do not allow for utility management to determine that certain aspects of the planning process are more important than others.

11. The MEDA rules do not rely upon the checklist approach. That is not to say that the MEDA rules are a free pass to ignore crucial planning analysis, but rather that they create comprehensive guidelines for resource planning and allow the utility to determine the best method to meet those guidelines. An IRP should not be created on an

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<sup>8</sup> Order of Rulemaking, Case No. EX-92-229.

assembly line, as the proposed rules seem to imply; it needs to be created with focus on overall quality and results.

12. The MEDA rules also include two important features that improve the IRP process. The first is Commission acknowledgment of the plan. Acknowledgement is a way to give value to all the work of the parties involved by acknowledging the plan is reasonable at the time it was developed. The second additional feature of the MEDA rule is the option to seek pre-approval for major resource decisions. MEDA has submitted a first draft proposal for pre-approval rules to help further understanding of what that process could look like. Pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. The Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. It is a logical extension to provide the option for large supply-side investments, if requested by the utility.

13. These two features dramatically heighten the value of the IRP but are not possible with rules that only focus on process and do not determine whether or not the outcome - the plan - is appropriate. A checklist focus only asks if a step was missed. If any step is missed, regardless of the value it does or does not add to the plan, the process is deficient. Rules that focus on the plan will determine whether the lack of certain analysis negatively impacts the plan.

14. The MEDA rules will require more time, effort and work on the part of Staff and other participants in the process, but it is certainly work that Staff (and others) are qualified to undertake. The mere fact that a checklist is easier to audit is not a sufficient basis to justify adoption of the proposed rules.

### **Concerns with Commission's Proposed Rules**

15. If the Commission does not adopt the MEDA rules, Ameren Missouri believes some changes should be made to the proposed rules. Initially, the Commission should add acknowledgment and pre-approval into the proposed rules. Including those features would create internal consistency with the proposed provisions requiring notification of plan changes, annual updates, and certification of other filings as consistent with the filed plan. If the Commission adopts the checklist approach, which focuses almost exclusively on the planning process, then those plan-specific requirements are unnecessary and should be removed.

16. In the Policy Objectives section of the rules, 4 CSR 240-22.010, the proposed rules contain an addition to Section (1). This section includes a portion that states, "...public interest is adequately served *with a view to the public welfare, efficient facilities, and substantial justice between patrons and public utilities.*" The italicized language should be removed. First, its meaning is unclear and undefined. The phrase "substantial justice" is not defined in the rules, nor is the word "patrons." The use of these undefined terms introduces substantial uncertainty and should be rejected. The phrases "public interest" and "efficient facilities" seem unnecessary as they would already be included in a determination of "public interest." Alternatively, if the Commission does not wish to remove the phrase, it should strike "substantial justice between patrons and public utilities" and add utility shareholders to the list of considerations which make up the public interest. Utility management cannot and should not ignore the interests of its shareholders when making resource decisions and that fact should be explicitly acknowledged in the IRP rules.

Shareholder interest should also be added to the language in 4 CSR 240-22.070(1)(C), so that it would read “public and shareholder interest.”

17. 4 CSR 240-22.020(8) defines “deficiency.” It defines a deficiency as anything that “fail[s] to meet the requirements...” of the rules. Ameren Missouri does not believe a deficiency should include failures to check a box that do not negatively impact the Company’s choice of its preferred plan. This interpretation is consistent with the position taken by the Commission in Ameren Missouri’s last IRP. The Commission stated, “The IRP rule does not require an electric utility to perform useless calculations simply to satisfy the letter of the regulation. AmerenUE adequately explained why it did not perform the additional calculations and no party has disputed that explanation. There is no deficiency with regard to this section of the regulation.”<sup>9</sup> In other words, the Commission has already determined that the failure to “check a box” does not, in and of itself, constitute a deficiency. The Commission should incorporate that determination into the proposed IRP rules.

Ameren Missouri proposes the following definition:

Deficiency - Noncompliance with the requirements of the rules contained in 4 CSR 240-22 the consequence of which is substantial enough that compliance would cause the electric utility to select an alternative resource plan as the electric utility’s preferred resource plan.

18. 4 CSR 240-22.080(13) requires variances to be filed 12 months prior to the utility’s triennial filing date. Ameren Missouri requests the Commission add a sentence which would allow for the filing of a variance within the 12 months prior to the triennial filing date for good cause shown.

### **Conclusion**

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<sup>9</sup> Case No. EO-2007-0409, Final Order Regarding AmerenUE’s 2008 Integrated Resource Plan, p. 9.

Ameren Missouri respectfully requests that the Commission consider the foregoing comments when finalizing the proposed rules and make the recommended changes detailed above.

Respectfully submitted,

UNION ELECTRIC COMPANY,  
d/b/a Ameren Missouri

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Comments of Ameren Missouri were served on the following parties via electronic mail (e-mail) on this 3<sup>rd</sup> day of January, 2011.

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