

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

In the Matter of a Determination of	)	
Special Contemporary Resource Planning	)	
Issues to be Addressed by Union Electric	)	Case No. EO-2020-0047
Company d/b/a Ameren Missouri in Its	)	
Next Triennial Compliance Filing or Next	)	
Annual Update Report	)	

**PUBLIC COUNSEL’S SUPPLEMENT TO ITS  
SUGGESTED SPECIAL CONTEMPORARY ISSUES**

**COMES NOW** the Office of the Public Counsel (“OPC”) and for its Supplement to its Suggested Special Contemporary Issues, states as follows:

1. On September 16, 2019, OPC filed its Suggested Special Contemporary Issues, in which OPC raised, through a Memorandum from OPC’s Chief Economist, Dr. Geoff Marke, five topics, including Topic #5, “*Rush Island and Labadie Environmental Retrofit Scenarios.*” OPC’s Memorandum stated that Ameren Missouri’s IRP was “deficient in its modeling for potential costs and subsequent resource planning modifications associated with pending court ordered remedial actions for the Rush Island and Labadie Power Plants.”

2. On September 30, 2019, the U.S. Eastern District Court issued its anticipated order wherein the Court ordered remedial actions in regards to Ameren Missouri’s violation of the Clean Air Act. Attached to this pleading is Dr. Marke’s supplemental Memorandum that recognizes the District Court’s order and the actions Ameren has been ordered to take for the Rush Island and Labadie Power Plants.

3. As explained further in the attached Memorandum, Ameren estimated the cost of installing environmental retrofits at Rush Island and Labadie to be between \$4.1

and \$6.8 ***billion*** dollars, which would result in every one of Ameren's customers paying between \$3,422 to \$5,630 ***per household or business***. The potential impact of this Court Order and Ameren's cost of compliance is substantial and will have a substantial impact on Ameren's modeling and resource planning

4. OPC submits this supplement to its Memorandum to bring the Court's Order to the Commission's attention regarding OPC's Topic #5.

WHEREFORE, the Office of the Public Counsel respectfully submits this Supplement to its Suggested Special Contemporary Issues.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 1st day of October 2019.

**/s/ Marc Poston**

## MEMORANDUM

To: Missouri Public Service Commission Official Case File,  
Case No. EO-2020-0047

From: Geoff Marke, Chief Economist  
Office of the Public Counsel

Subject: OPC's Revised Recommended Special Contemporary Issue #5 in Light of Recent  
Court Rulings

Date: October 1<sup>st</sup>, 2019

### Topic 5: Rush Island and Labadie Environmental Retrofit Scenarios

#### Background

On June 7th, 2019 in Case No: EO-2019-0314, OPC filed comments alleging that Ameren Missouri's IRP is deficient in its modeling for potential costs and subsequent resource planning modifications associated with pending court ordered remedial actions for the Rush Island and Labadie Power Plants.

On September 11, 2019 the Commission cited Rule 20 CSR 4240-22 (Chapter 22) stating that:

(Chapter 22) does not require or authorize any action by the Commission with regards to the annual integrated resource plan update. As a result, there is no need for further decision or action by the Commission at this time. The Commission acknowledges the comments and Ameren Missouri should consider them in its next triennial filing.<sup>1</sup>

On September 15, 2019, OPC filed suggested Special Contemporary Issues in Case No: EO-2020-0047. Topic #5 of OPC's issues was titled "Rush Island and Labadie Environmental Retrofit Scenarios" and provided the following suggested recommendation:

Ameren Missouri should develop alternative resource plans that consider, at a minimum, a range of high, medium, low remedial cost scenarios related to Rush Island. For example, based on the aforementioned remedial recommendations proposed, costs could include variations of remedial retrofit scenarios including flue gas desulfurization equipment ("FGD" or "scrubbers") or dry sorbent injection equipment ("DSI"). The former (FGD) would represent a "high" cost scenario and the latter (DSI) a "med" cost scenario. A "low" cost scenario could reasonably be understood as Ameren Missouri's proposed remediation recommendation that past pollution should be offset by Ameren turning over "allowances" it won for emissions reductions elsewhere. It is important to note, that the inclusion of these scenarios should impact decisions and timing throughout the rest of Ameren Missouri's integrated resource planning. It's all interdependent.

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<sup>1</sup> EO-2019-0314 Notice Acknowledging Ameren Missouri's IRP Annual Update Report and Closing File p. 3-4.

GM-3 includes OPC's filed Notice of Deficiency to Ameren Missouri's IRP update which provides greater background on the issue, deficiency rationale, and pending costs. To be clear, the estimated cost impact has already been conducted by Ameren Missouri (or a third-party contracted by Ameren Missouri), but neither these modeled costs nor the subsequent impact on resource planning are currently accounted for in Ameren Missouri IRP filings with the Commission.<sup>2</sup>

On September 19<sup>th</sup>, 2019 Ameren Missouri filed a motion for extension of time to respond to the Commission requesting a two-week extension for good cause due to:

Two Ameren Missouri personnel involved in the drafting and submission of the response are traveling and unavailable during various portions of the time leading up to the response: a subject matter expert has been traveling since September 5 and is not returning until [sic] to the office until September 24, at which point counsel is leaving and will not return until September 30, 2019.<sup>3</sup>

On September 20, 2019 the Commission ordered a 10 day extended time for Ameren Missouri to respond to the Special Contemporary Issues suggested for Ameren Missouri.

On September 30<sup>th</sup>, 2019 the U.S. Eastern District Court ordered remedial actions in regards to Ameren Missouri's violation of the Clean Air Act at the Rush Island Power Plant. Judge Rodney W. Sippel's concluding order states:

In the 1977 Clean Air Act Amendments, Congress struck a balance. The Act allowed then-existing power plants to continue emitting high levels of pollution until their owners made major modifications at those plants. At that point, they would have to apply for a PSD [Prevention of Significant Deterioration] permit and meet reduced emissions requirements. For thirty years, Ameren benefitted from this policy, operating Rush Island without the need to apply for a PSD permit. When Ameren decided to make major modifications to expand Rush Island's capacity, Ameren refused to play by the rules Congress set. It did not apply for the required PSD permit, and in so doing skirted PSD's requirement to install the best available technology to control the pollution Rush Island emits.

To remedy its violation of the Clean Air Act, Ameren must now apply for a PSD permit for Rush Island within ninety days, propose wet FGD [Flue Gas Desulfurization] as BACT [Best Available Control Technology] in its permit application, and implement BACT no later than four and one-half years from this order. However, to stop there would be to abet Ameren's Clean Air Act violation and to ignore harm that violation has caused. Mindful of my authority to grant other appropriate injunctive relief under the Clean Air Act, I cannot ignore the harm.

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<sup>2</sup> EO-2020-0047 Public Counsel's Suggested Special Contemporary Issues p. 7

<sup>3</sup> EO-2020-0047 Ameren Missouri's Motion for Extension of Time to Respond p. 2

In addition to the relief I order at Rush Island, I will also order Ameren to reduce its pollution at Labadie in an amount equal to Ameren's excess emissions at Rush Island. Ameren may choose whether it will achieve the reductions by installing DSI [Dry Sorbent Injection] or some other more effective pollution control at Labadie. This is not a penalty for Ameren's violation of the Clean Air Act; it is an attempt to put the Plaintiffs in the place they would have been had Ameren complied with PSD program requirements from the start. The ton-for-ton reduction at Labadie directly remediates the public harm Ameren has caused and reverses the unjust gain Ameren has enjoyed from its violation of the Clean Air Act at Rush Island.

Accordingly,

**IT IS HEREBY ORDERED THAT** Defendant Ameren shall apply for a Prevention of Significant Deterioration permit for the Rush Island Energy Center within ninety days of the date of this Order. Ameren must propose wet flue-gas desulfurization as the technology-basis for its Best Available Control Technology proposal.

**IT IS HEREBY ORDERED THAT** Defendant Ameren shall operate Rush Island Units 1 and 2 in compliance with an emissions limit that is no less stringent than 0.05 lb SO<sub>2</sub>/mmBTU on a thirty-day rolling average within four and one half years of this Order.

**IT IS HEREBY ORDERED THAT** Defendant Ameren shall install a pollution control technology at least as effective as dry sorbent injection at the Labadie Energy Center within three years from the date of this Order. That technology shall remain in use at Labadie until Ameren has achieved emissions reductions totaling the same amount as the excess emissions from Rush Island, as defined in this Order, through the time Ameren installs BACT at Rush Island.

**IT IS HEREBY ORDERED THAT** I will retain jurisdiction over this case until Ameren has fully implemented the remedies set forth in this Order.<sup>4</sup>

#### Revised Suggested Recommendations

OPC reasserts the deficiencies it filed in Case No: EO-2019-0314 and continues to maintain that Ameren Missouri should be modeling scenarios related to Rush Island and Labadie based, in part, on the Company losing its appeal and exhausting the appeal process. Given the order of magnitude of potential non-compliance costs, based on Ameren Missouri's own projections, the absence of any alternative resource plan that attempts to consider scenarios regarding its litigated power plants is a clear deficiency and in non-compliance with the Commission's IRP rules.

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<sup>4</sup> *U.S. v. Ameren Missouri*, 4:11 CV 77 RWS (E.D. Mo.). Memorandum Opinion & Order p. 155-157. See also GM-1 for the entire Opinion and Order.

To be clear, the estimated cost impact has already been conducted by Ameren Missouri (or a third-party contracted by Ameren Missouri) and are included in Table 1.

Table 1: Ameren Missouri's average annual, overall and per customer estimated costs associated with environmental compliance at Rush Island and Labadie<sup>5,6</sup>

Controls at Rush Island and Labadie			
Cumulative Cost to Customers Through Revenue Requirement			
	Average Annual Cost to Customers	Overall Cost to Customers	Per-Customer Cost
Rush Island FGD on 2 Units	\$125,500,000	\$2,509,800,000	\$2,077
Labadie FGD on 4 Units	\$214,700,000	\$4,294,100,000	\$3,554
Labadie DSI on 4 Units	\$70,700,000	\$1,625,300,000	\$1,345
Both Plants Combined	\$196,200,000 to \$340,200,000	\$4,135,100,000 to \$6,803,900,000	\$3,422 to \$5,630

Note: Sums of columns may not always match totals, due to rounding.

Ameren Missouri's own estimates of remedial costs range approximately from \$4 to \$7 billion dollars. Likewise, premature retirement of one or two power plant units will necessarily bring additional attendant costs and obvious changes in Ameren Missouri's IRP.

OPC's revised recommendation is that Ameren Missouri should develop alternative resource scenarios that consider a variety of options related to remediation options related to Rush Island. At a minimum, such scenarios should include:

- Average annual, overall cost and per-customer cost to customers for remedial actions related to Rush Island and Labadie and its impact on the Company's preferred IRP;
- IRP scenarios that include the premature retirement of one and both power plant units; and
- Changes (if any) to the IRP in planned investment via SB 564 in light of remedial actions and/or premature retirement of one and both power plant units.

Finally, OPC reiterates its position that we are making no recommendation on the prudence of any actions/inactions related to Ameren Missouri's management decision to not make historical environmental investments related to the Clean Air Act. The IRP is a modeling exercise that should be transparent about the Company's risk exposure and should consider scenarios in which its appeals are rejected.

<sup>5</sup> Ameren Missouri's proposed findings of fact—remedy phase p. 41.

<sup>6</sup> Source listed in brief is as follows: "Slides 15 and 22; Celebi Report pp. 31-33 & Fi. 17; Celebi\_EXP\_0000023 (Fig 15, 17, 18, 28—RevReq & Rate Impact Model\_FINAL.xlsx)"


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

**AFFIDAVIT OF GEOFF MARKE**

STATE OF MISSOURI     )  
                                  )     SS.  
COUNTY OF COLE     )

**COMES NOW GEOFF MARKE** and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *PUBLIC COUNSEL'S SUPPLEMENT TO ITS SUGGESTED SPECIAL CONTEMPORARY ISSUES* and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


  
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Geoff Marke  
Chief Economist

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1<sup>st</sup> day of October, 2019.



**JERENE A. BUCKMAN**  
My Commission Expires  
August 23, 2021  
Cole County  
Commission #13754037

  
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Jerene A. Buckman  
Notary Public

My Commission expires August 23, 2021.