

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

In the Matter of Ameren Missouri's 2024)
Integrated Resource Plan Annual Update) File No. EO-2025-0123
Report.)

AMEREN MISSOURI'S RESPONSE TO SIERRA CLUB'S MOTION TO COMPEL

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its response to Sierra Club's Motion to Compel, states as follows:

BACKGROUND

1. Sierra Club's description of the procedural history, as stated in paragraphs 1 through 6 of its Motion to Compel, is accurate.
2. Sierra Club filed its Motion to Compel on December 4, 2024.
3. On December 5, 2024, the Missouri Public Service Commission (the "Commission") issued an order directing Ameren Missouri, the Commission Staff ("Staff"), and any other interested party to submit responses by December 16, 2024.
4. On December 12, 2024, Staff filed a response indicating that it has no position regarding Sierra Club's Motion to Compel.

SIERRA CLUB'S DATA REQUESTS AND THE 2024 IRP UPDATE WORKSHOP

5. Sierra Club submitted eleven data requests ("DRs") to Ameren Missouri, most of which contain numerous subparts. Several of Sierra Club's DRs seek information that is beyond the scope of changed conditions that Ameren Missouri analyzed for its 2024 IRP annual update filing. These DRs are incredibly broad and seek, for example, information regarding:

- emissions statistics, generation and capacity statistics, overhead and maintenance costs, and many more statistics for Ameren Missouri's entire generation fleet, including Ameren Missouri's coal units (DR Nos. 1.2 and 1.3);

- the MISO capacity price forecast used in Ameren Missouri's modeling (DR No. 1.4);
- cost forecasts of new supply side resource builds, including solar, battery storage, wind, natural gas, and "any other new supply side resources modeled" (DR No. 1.5);
- estimates to co-fire coal units with natural gas, estimates to perform carbon capture and sequestration on coal and natural gas units, as well as numerous other bits of information regarding carbon capture and sequestration (DR No. 1.7);
- bids received from developers for utility-scale wind projects (DR No. 1.8);
- details related to capital projects required if the ozone in the St. Louis area were to degrade to "serious non-attainment status" as well as other information relating to ozone non-attainment; estimates for selective catalytic reduction on coal units (DR No. 1.9); and
- details relating to capital projects that would be required if the PM2.5 in the St. Louis area were designated as "non-attainment" by the EPA; details relating to capital projects that would be required given the partial disapproval of Missouri's Regional Haze implementation plan (DR No. 1.10).

6. Further, DRs 1.1 through 1.5 are word for word identical¹ to data requests submitted by Sierra Club and recently answered by Ameren Missouri in the 2023 triennial compliance filing matter (File No. EO-2024-0020).

7. Prior to the IRP annual update workshop that Ameren Missouri hosted on November 6, 2024, Ameren Missouri solicited written questions from stakeholders. Sierra Club submitted no questions in advance.

¹ The only exception is DR 1.4, which seeks data over the last 5 years, is updated to a date range of 2019 to 2024 instead of 2018 to 2023. *Compare* Sierra Club DR Nos. 1.1 to 1.5 in the instant matter with Sierra Club DR Nos. 1.1 to 1.5 in File No. EO-2024-0020.

AMEREN MISSOURI'S OBJECTIONS DIRECTED AT ALL DATA REQUESTS

8. Overruling Ameren Missouri's objections and permitting comprehensive DRs similar to those propounded by Sierra Club here would expand these limited IRP annual update matters into something more closely resembling an IRP triennial compliance filing.

9. Additionally, overruling Ameren Missouri's objections and expressly permitting DRs in IRP annual update cases would implicitly invite more DRs from Sierra Club and an array of other stakeholders such that responding to DRs would become the chief focus of these limited annual update matters with only limited attention given to the IRP update workshop itself. Importantly, Sierra Club is not the only party that would like to obtain discovery from Ameren Missouri in this matter. Indeed, New Energy Economics also submitted several DRs to Ameren Missouri in this IRP annual update matter.² But if DRs like those proposed by Sierra Club are allowed, there would be no logical basis for not allowing any of the thirteen intervenors (in Ameren Missouri's last triennial compliance case, who have each been added to this docket) from submitting dozens if not hundreds of DRs in an IRP annual update docket that is to be completed within about 2 to 2½ months of when it begins.³

10. In support of its argument that DRs in IRP annual update cases are permissible, Sierra Club points to the general Commission Rule regarding discovery.⁴ This general rule, however, is implicitly contradicted by Rule 20 CSR 4240-22.080(3), which describes a short IRP process that strongly suggests the Commission's rules do not contemplate discovery in an IRP annual update matter. The Commission rules contemplate that IRP annual update matters

² In response to these DRs from New Energy Economics, Ameren Missouri has asserted many of the same objections that it asserted in response to Sierra Club's DRs.

³ 20 CSR 4240-22.080(3)(B)-(D) (providing for filing of an annual update report no less than 20 days prior to the workshop, the filing of a summary report within 10 days thereafter, and filings by stakeholders within 30 days after the summary report).

⁴ 20 CSR 4240-2.090(1) ("Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.").

consist of one workshop, a summary report, and stakeholder comments.⁵ There is no provision in the Commission rules for any hearing or any decision or other action by the Commission.⁶ The duration of IRP annual update matters is typically only about 60 to 75 days from filing the utility's IRP annual update report to submission of stakeholder comments.⁷ This is a much shorter process than IRP triennial compliance filing matters, which are often active for 12 months or longer.⁸ The 2 to 2½ month process contemplated by the rules for IRP annual updates would potentially be turned into an elongated process that might not end for several months if Ameren Missouri were obligated to answer comprehensive DRs from multiple stakeholders and then the stakeholders were to wait to prepare their comments until receipt of Ameren Missouri's DR responses. And if discovery disputes were to arise over the proper scope of discovery in an IRP annual update docket, extending the duration of the IRP annual update matter would be an absolute certainty.

11. In interpreting Commission rules, the principles of construction are the same as those used to interpret statutes.⁹ The primary principle is to ascertain the intent of the legislature and, in this instance, the Commission, from the language employed and to give effect to that intent.¹⁰ Similar to statutes, provisions of the Commission rules should not be read in isolation but construed together and, if reasonably possible, the provisions should be harmonized with each other.¹¹ The law favors a statutory interpretation that averts an unreasonable, oppressive,

⁵ 20 CSR 4240-22.080(3)(B)-(D)

⁶ *Id.*

⁷ *See id.*

⁸ Ameren Missouri's 2023 IRP matter (File No. EO-2024-0020), which was initiated on Sept. 26, 2023, is still awaiting final resolution.

⁹ *Stat ex rel. Evans v. Brown Builders Elec. Co.* 254 S.W.3d 31, 35 (Mo. banc 2008) ("The same rules of construction are used to interpret regulations as are used to interpret statutes."); *see also Woolridge v. Woolridge*, 915 S.W.2d 372, 378 (Mo. Ct. App. 1996) (providing that the same principles used to interpret statutes are used to interpret Missouri Supreme Court Rules).

¹⁰ *Woolridge v. Woolridge*, 915 S.W.2d at 378.

¹¹ *State ex rel. Evans v. Brown Builders Elec. Co., Inc.* 254 S.W.3d at 35 ("The provisions of a legislative act are not read in isolation but construed together, and if reasonably possible, the provisions should be harmonized with each

or absurd result.¹²

12. Harmonizing the general Commission rule regarding discovery (20 CSR 4240-22.090(1)) with the Commission rule that sets forth the quick procedure for IRP annual update matters (20 CSR 4240-22.080(3)), it is reasonable to conclude that the Commission did not intend for the general rule regarding discovery to apply to IRP annual updates given that i) the inherent nature of an IRP annual update does not provide time for discovery and ii) the need for and benefits of discovery are very limited. Concluding that the general rule permits thirteen intervening stakeholders to conduct unlimited discovery in a 75-day IRP annual update docket, in which the Commission makes no ruling of any kind, would be unreasonable, oppressive, and absurd.

13. In promulgating Rule 20 CSR 4240-22.080(3), the Commission clearly intended that IRP annual update dockets would be significantly different from IRP triennial compliance dockets. The Commission did not and should not intend to transform an IRP annual update docket into a slightly shorter version of an IRP triennial compliance matter.

14. In response to this argument regarding insufficient time for discovery in this IRP annual update docket, Sierra Club points to one of Evergy's IRP annual update cases wherein at least one stakeholder submitted DRs to Evergy, and Evergy apparently (voluntarily) answered those DRs. Sierra Club argues that this discovery had no negative impact on the duration of that matter. However, New Energy Economics actually filed a motion for extension of time to submit its comments to Evergy's IRP annual update report, arguing that it needed additional time to

other"). See also *Edwards v. Hyundai Motor Am.*, 163 S.W.3d 494, 497 (Mo. Ct. App. 2005) ("Provisions of an entire legislative act must be construed together and, if reasonably possible, all provisions must be harmonized.")

¹² *Elrod v. Treasurer of Missouri as Custodian of Second Injury Fund*, 138 S.W.3d 714, 716 (Mo. banc 2004) ("[w]e will not construe the statute so as to work unreasonable, oppressive, or absurd results."). See also *Edwards v. Hyundai Motor Am.*, 163 S.W.3d at 497.

complete the discovery process and obtain DR responses from Evergy prior to submitting its comments.¹³ The Commission ultimately granted all stakeholders a 17-day extension of time to file their comments to Evergy's IRP annual update report.¹⁴ That IRP annual update case serves as an example of how the duration of IRP update matters would need to be extended if stakeholders were permitted to obtain DR responses. And the fact that Evergy chose to answer the DRs provides no support for Sierra Club's request here for two reasons. First, *stare decisis* does not apply to Commission orders.¹⁵ Second, what did or did not take place in that one case does not change the fact that the Commission's rules, for the reasons discussed earlier, simply do not contemplate discovery in an IRP annual update.

15. Permitting DRs in this matter is unnecessary as Ameren Missouri already provides opportunity to the stakeholders to obtain information by way of the IRP update workshop. Stakeholders are invited to submit questions in advance so that Ameren Missouri can come to the workshop with answers, and stakeholders also have opportunity to ask questions during the workshop. Similarly, Sierra Club has alternate avenues to obtain at least some of the discovery that it seeks here. At least two of the DRs at issue here are very similar to discovery that Sierra Club has very recently obtained from Ameren Missouri in the pending electric rate case.¹⁶ In response to this point, Sierra Club asserts that certain stakeholders might choose to participate in only an IRP annual update proceeding and not in the electric rate case. Any stakeholder participating in an IRP annual update proceeding, however, could simply choose to

¹³ *Motion for Extension of Time and Motion for Expedited Treatment*, File Nos. EO-2023-0212 and EO-2023-0213 (July 26, 2023), at ¶ 8 ("The 17-day extension for comments is necessary to provide adequate time for the discovery process.")

¹⁴ *Order Granting Extension of Time and Request for Expedited Treatment*, File Nos. EO-2023-0212 and EO-2023-0213 (Aug. 1, 2023).

¹⁵ *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003) ("an administrative agency is not bound by *stare decisis*, nor are PSC decisions binding precedent on this Court".)

¹⁶ Compare Sierra Club DR Nos. 1.2 and 1.3 in the instant matter to Sierra Club DR No. 1.12 in File No. 2024-ER-0319.

intervene in the electric rate case as well. Moreover, five of the DRs at issue here were asked by Sierra Club and answered by Ameren Missouri just last year in the 2023 triennial IRP case.¹⁷

16. Sierra Club also asserts that a prior Commission Order, which permitted DRs to a utility *in a triennial compliance filing matter*, is authority that supports permitting DRs in IRP annual update matters as well.¹⁸ That case, however, is easily distinguishable for several reasons. First, as discussed above, triennial compliance filing matters are by design and under the express terms of the IRP rules much longer than IRP annual update matters, making them compatible with conducting discovery. Further, in triennial compliance filings, an evidentiary hearing is contemplated if the Commission finds that litigation of matters raised in the triennial compliance filing docket warrant a hearing.¹⁹ Discovery in such a case makes sense as a means to allow the parties to prepare their formal comments, to facilitate possible agreement on a joint filing to resolve claimed deficiencies, and ultimately to engage in a contested hearing process if the Commission finds the written filings in the case are insufficient to allow it to resolve the docket. Conversely, in IRP annual update matters, there is no possibility for a hearing, no need to prepare for a hearing, and no circumstances by which discovery responses could be admitted into evidence.²⁰ Lastly, as noted above, as an administrative agency, the Commission is not bound by *stare decisis*, and prior Commission orders are not binding precedent that would control the outcome of this dispute.

17. In its Motion to Compel, Sierra Club explains the benefits of discovery, which include promoting early settlement, eliminating surprise, narrowing issues, facilitating trial

¹⁷ Compare Sierra Club DR Nos. 1.1 to 1.5 in the instant matter with Sierra Club DR Nos. 1.1 to 1.5 in File No. EO-2024-0020.

¹⁸ *Sierra Club's Motion to Compel Discovery*, at ¶ 9.

¹⁹ 20 CSR 4240-22.080(16)(D).

²⁰ 20 CSR 4240-22.080(3).

preparation, and obtaining relevant information.²¹ Given that i) no hearing or trial is even possible in the instant matter, ii) there is no trial preparation, and iii) there is no controversy to settle, these benefits are completely absent in this case.

AMEREN MISSOURI'S ADDITIONAL OBJECTON TO SIERRA CLUB DR NO. 1.6

18. Sierra Club DR No. 1.6 seeks information regarding how Ameren Missouri will comply with the EPA's new carbon capture pollution standards for coal and gas generation (EPA Rule 111(d)).

19. In the 2023 triennial compliance matter, Ameren Missouri and Sierra Club agreed that Ameren Missouri would include analysis of its compliance with new and updated EPA regulations in its next preferred resource plan filing, as set forth in the parties' Joint Filing, which was submitted last June.²² Sierra Club points to certain verbiage regarding resolution of another, similar concern asserted by St. Louis Homes for All, wherein Ameren Missouri and St. Louis Homes for All agreed that Ameren Missouri would include analysis of its compliance in its next preferred resource plan "whether that occurs via an Annual Update or Change in Preferred Resource Plan."²³ This does not mean, as Sierra Club suggests, that Ameren Missouri is obligated to address compliance with EPA regulations in either the IRP Annual Update or a Change in Preferred Resource Plan, whichever comes first. The obligation is triggered by the filing of a Preferred Resource Plan (which would occur either in the next triennial IRP compliance filing or via a change in Preferred Resource Plan). While a change in the Preferred Resource Plan could in theory be made concurrently with the filing of an IRP Annual Update, no such change was made in this instance. The agreements made in the triennial IRP Joint Filing

²¹ *Sierra Club's Motion to Compel* at ¶ 13, citing *State ex. Rel. Woytus v. Ryan*, 776 S.W.2d 389, 391 (Mo. banc 1989).

²² *Joint Filing, Attachment A*, File No. EO-2024-0020, at p. 6.

²³ *Id.* at p. 5.

were to address these EPA regulations whenever Ameren Missouri files a new Preferred Resource Plan. Discovery on this issue now, in the IRP annual update docket, seeks information that is completely irrelevant to the 2024 IRP Annual Update.

20. A utility's Preferred Resource Plan is "the resource plan that is contained in the resource acquisition strategy that has most recently been adopted by the utility decision-maker(s) for implementation by the electric utility."²⁴ Ameren Missouri's 2024 IRP Annual Update did not update or change the Preferred Resource Plan specified in the 2023 IRP. For this reason, the 2023 IRP still contains the most recently adopted resource acquisition strategy.

WHEREFORE, Ameren Missouri requests the Missouri Public Service Commission sustain its objections to Sierra Club's data requests and deny Sierra Club's Motion to Compel.

Respectfully submitted,

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²⁴ 20 CSR 4240-22.020(46).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record, as well as those on the service list for the above-captioned file number, via electronic mail (e-mail) on this 16th day of December, 2024.

/s/ William D. Holthaus, Jr.
William D. Holthaus, Jr.