BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Revenues for Electric Service	)))	Case No. ER-2014-0258

UNITIED FOR MISSOURI'S REPLY BRIEF

COMES NOW, UNITED FOR MISSOURI, INC. ("UFM"), by and through its counsel, and for its *Reply Brief*, states as follows:

Introduction

UFM, for the most part, has contented itself with monitoring issues of economic development in this rate case, those issues raised by the Missouri Public Service Commission ("Commission") that pertain to economic growth and business development in the state, leaving the specifics of revenue requirement and rate design to other parties. UFM addressed the broad issues of economic development and the Commission's role therein in its *Initial Brief*. However, the Sierra Club, in its *Initial Post-Hearing Brief*, has taken such a radical position on Ameren Missouri's Labadie Energy Center (also "Labadie plant") electrostatic precipitator ("ESP") expenses that UFM is compelled to respond. Sierra Club claims that "MATS retrofits are just the tip of a rapidly melting iceberg,"[1] to which Ameren Missouri must respond. Rather than allowing Ameren Missouri to recover the cost of the ESPs, the Sierra Club would have Ameren Missouri join it in its idiosyncratic vision that the Environmental Protection Agency's Clean Power Plan will inevitably, immediately, and unalterably go into effect and join it in jumping off the iceberg in the delusion that it is already gone. The Commission should not join the Sierra Club's delusion.

[1] *Sierra Club Initial Post-Hearing Brief*, p. 4.

Argument

Sierra Club's Claim

Sierra Club challenges Ameren Missouri's decision to retrofit Units 1 and 2 at the Labadie Energy Center with ESPs in order to comply with the U.S. Environmental Protection Agency's ("EPA") Mercury and Air Toxics Standards ("MATS"). The justification for its challenge is that Ameren Missouri has not adequately considered additional regulatory limitations for carbon dioxide emissions arising from the EPA's proposed Clean Power Plan, regulations proposed June 2, 2014, and not anticipated to be finalized until late summer 2015. Sierra Club proposes that it would be better for Ameren Missouri not to invest in the ESPs and to scrap the Labadie plant.

Legal Standard

There are three primary principles that must guide the Commission's decision on this issue. First, a utility's costs are presumed to be prudent. Second, the Commission's decision must be based on substantial and competent evidence;[2] speculation cannot overcome the presumption of prudence.[3] Third, the Commission's decision must be based upon the circumstances that existed at the time the decision was made. In *Atmos Energy Corp. v. Office of Pub. Counsel*, the Western District Court of Appeals declared:

> A utility's costs are presumed to be prudently incurred. The presumption does not, however, survive a showing of inefficiency or improvidence. If some other participant in the proceedings alleges that the utility has been imprudent in some manner, that participant has the burden of creating a serious doubt as to the prudence of the expenditure. If that is accomplished, the utility then has the burden of dispelling those doubts and proving the questioned expenditure was in fact prudent. The prudence test should not be based upon hindsight but upon reasonableness[.]
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> The utility's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the utility had to

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[2] *Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376 (Mo. App. 2005).
[3] *Brown v. R.J. Brown Co.*, 172 S.W.2d 645, 351 Mo. 557 (Mo. 1943).

> solve its problem prospectively rather than in reliance on hindsight. In effect, the PSC's responsibility is to determine how reasonable people would have performed the tasks that confronted the utility.[4]

Speculation, much like hindsight, sets up a set of facts and circumstances that do not exist at the time of the relevant decision. Neither are competent and substantial evidence. The presumption of prudence may not be overcome by hindsight, and it may not be overcome by conjecture, presumption or speculation.

Ameren Missouri's Conduct is Prudent Regarding the Labadie ESPs

While Ameren Missouri may stand on the presumption of its prudence regarding the Labadie ESPs, it would be good to remember the context of the situation. The Labadie plant has been in service since 1970 and has 24 years anticipated remaining life.[5] The Labadie plant is Ameren Missouri's largest generating plant, capable of generating up to approximately 2.4 gigawatts of electricity.[6] It is relatively inexpensive to operate.[7] Ameren Missouri's Labadie plant has served the citizens of Missouri and the customers of Ameren Missouri well since it was put in service. It is an asset of the company's that has provided safe and reliable service.

Ameren Missouri has undertaken an analysis of the various EPA edicts and their potential impact on Ameren Missouri's business and services. As Matt Michels explains in his Rebuttal Testimony, Ameren Missouri has done an analysis of the cost of retiring Labadie plant in its IRP.[8] Ameren Missouri found that retiring the plant would cost Ameren Missouri customers

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[4] 389 S.W.3d 224, 228 (Mo. App. 2012), quoting *Office of Public Counsel v. Missouri Public Serv. Comm'n*, -- S.W.3d. – at – (Mo. App. W.D. 2012).
[5] Id. at 6, 7.
[6] See *Report and Order*, File No. EA-2012-0281 (July 2, 2014), p. 4.
[7] Ex. 65HC.
[8] Ex. 26, p. 11, 12.

approximately $3.6 billion.[9] Therefore, the Company is undertaking a $150 million investment in the Labadie ESPs in order to comply with the EPA's MATS requirements.[10]

Ameren Missouri is not unaware of the environmental challenges created by the EPA. The continuing barrage of onerous environmental regulations is a challenge to Ameren Missouri and the entire state. But if there is one thing that is clear, nothing is clear when it comes to the eventual implementation of the Clean Power Plan. As Michael Moehn explains:

> The most serious challenge that the Company faces is the need to invest large amounts of money into capital projects to comply with ever-more-stringent environmental requirements, and to replace aging infrastructure to ensure that we will continue to be able to provide the consistently reliable level of service our customers have come to expect. With regard to environmental requirements, the Greenhouse Gas ("GHG") rules recently issued by the U.S. Environmental Protection Agency ("EPA") provide a good example. Although the rules permit states flexibility in their implementation and therefore it is not exactly clear how these rules will impact Ameren Missouri, under any scenario, the costs of compliance could be substantial. Although the GHG rules have garnered the most publicity in recent weeks, there are many other environmental regulations that will increase costs for Ameren Missouri and other electric utilities in the coming years.[11]

The Commission itself is well aware that it is not clear how the rule will impact Ameren Missouri. The Commission has undertaken an investigation into the potential costs of the Clean Power Plan.[12] UFM submitted its comments and volumes of supporting information showing that the so-called science of man-made climate change is politically motivated. UFM and other parties submitted information showing that the EPA is dramatically overstepping its authority in its issuance of the Clean Power Plan.[13] Based upon that investigation, the Commission filed comments on EPA's Clean Power Plan. In its comments, the Commission stated that, "there are

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[9] *Id*. see Tr. 28:1935
[10] Ex. 28, p. 12.
[11] *Id*.
[12] Generally, see File No. EW-2012-0065.
[13] See specifically *Reply Comments of United for Missouri, Inc*., File No. EW-2012-0065 (September 16, 2014).

still many issues that need to be addressed before a final rule can be published" and that, "[m]ore time is likely needed to develop a plan that is mindful of the resource requirements and costs associated with implementation."[14]

The Federal Energy Regulatory Commission recently held a series of technical conferences regarding the Clean Power Plan.[15] The technical conferences focused on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure arising from the Clean Power Plan. At one of the technical conferences held in St. Louis on March 31, the FERC heard from many stakeholders that the EPA's carbon reduction guidelines, particularly the proposed interim compliance goals, cannot be realistically achieved without causing reliability challenges for the bulk electric system.[16] The Clean Power Plan is being strongly challenged. UFM repeats the words of Mr. Moehn, "that it is not exactly clear how these rules will impact Ameren Missouri."

Sierra Club's Claim is Specious

Still, Sierra Club does not like Ameren Missouri's assessment of the situation. Sierra Club would have Ameren Missouri not invest in ESP retrofits for the Labadie plant, cause the Labadie plant to be out of compliance with MATS, scrap the valuable investment that is the

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[14] Missouri Public Service Commission, *Comments on the Environmental Protection Agency "Emission Guidelines for Existing Stationary Sources: Electric Generating Units* 15 (December 1, 2014).

[15] Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15-4-000, (Dec. 9, 2014) (Notice of Technical Conferences), *available at* http://www.ferc.gov/CalendarFiles/20141209165657-AD15-4-000TC.pdf.

[16] Commissioner Stoll was in attendance and made a presentation at the technical conference. See Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15-4-000, (Mar. 25, 2015) (Supplemental Notice of Technical Conferences), available at http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13815278

Labadie plant, and immediately go from an approximately $150 million investment to a course of action that will cost Ameren Missouri customers $3.6 billion. This is nonsense.

Sierra Club lists two major factors that show that Ameren Missouri is imprudent:

> First, Dr. Hausman discussed the absence of any analysis ascertaining whether avoiding the retrofit costs at individual units through various options would be the least-cost option for the Company's ratepayers. Second, Sierra Club noted that Ameren held—and continues to hold—the unreasonable position that there is an 85% chance of no carbon costs affecting its units. Given the hundreds of millions of dollars at stake here, either one of these factors alone would create a serious doubt as to the prudence of the ESP retrofits.[17]

But a review of the testimony on both factors shows that Sierra Club has begged the question. Regarding the first factor, Sierra Club's witness assumes what Sierra Club is trying to show, that the Labadie plant will ultimately be forced to shut down anyway. On the one hand, he recognizes that Ameren Missouri's costs will increase if Labadie is shut down (thereby endorsing the prudency of Ameren Missouri's decision), but, on the other hand, "there would be substantial savings from avoiding not only the cost of the ESPs themselves, but numerous future environmental retrofits. Ameren would also reduce its exposure to higher fuel and emissions costs in the future, including the costs of CO_2 emissions."[18] What are these numerous future environmental retrofits? Despite the witness' certainty, the Clean Power Plan is less than certain. Regarding the second factor, as Ameren Missouri witness Matt Michaels explains, the claim is simply not true.[19]

And while Sierra Club assumes what it tries to prove, Ameren Missouri has done a comprehensive analysis of appropriate responses to the Clean Power Plan.

> Should the rule be implemented as proposed, Ameren Missouri would have to significantly alter its preferred resource plan in such a way as to lead to much higher capacity reserves by advancing and adding natural gas-fired generation, as early as 2020,

[17] *Sierra Club Initial Post-Hearing Brief*, p.7
[18] Ex. 900, p. 9.
[19] Ex. 26, pp. 8, 9.

> and uneconomically dispatching those resources, which would not otherwise be needed until 2034 to meet customer demand and reserve margin requirements for reliability.
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> The changes include 1) advancing the retirement of Meramec by three years to the end of 2019, 2) constructing a 1,200 MW combined cycle generation facility to be operational by the beginning of 2020, 3) altering the operation of the new combined cycle and existing coal resources such that gas generation runs more (about twice what it would run otherwise) and coal generators run less than they would under current methods for economic dispatch in MISO, and 4) constructing additional wind (or possibly nuclear) resources in the 2022-2030 timeframe. Making these changes would result in additional costs to customers of approximately $4 billion over the 15 year period starting in 2020 while achieving roughly the same level of annual carbon dioxide emission reductions a few years earlier than under our preferred plan.[20]

To be sure, Sierra Club postures its recommendation in terms of the Commission requiring, "that every environmental retrofit of this magnitude requires a net present value analysis that takes into account a reasonable range of costs and risks facing the investment for which recovery is sought. Without a thorough net present value analysis, there can be no meaningful transparency and no meaningful stakeholder participation in the ratemaking process."[21] Sierra Club's meaning is "transparent." It means to subject Ameren Missouri's decision-making to a long, drawn out process in which it will not accept a risk factor other than going immediately to a complete implementation of the Clean Power Plan. But this is not the standard by which the Commission must judge Ameren Missouri's conduct. If the expenses are reasonably and prudently incurred, the expenses should be allowed to go into rates.

Conclusion

Ameren Missouri's Labadie Energy Center has been in operation since 1970. It has provided safe and reliable electric service to the citizens of the state of Missouri and Ameren

[20] *Investing in Missouri: 2014 Integrated Resource Plan*, Executive Summary, p. 17, filed in File No. EO-2015-0084 (Oct. 1, 2014)
[21] Id. pp. 14, 15.

Missouri customers for decades. Ameren Missouri has taken a prudent intermediate step to retrofit the Labadie plant with ESPs at a cost of approximately $150 million to bring the Labadie plant into compliance with MATS.

Ameren Missouri is prepared to comply with the onslaught of the federal EPA's Clean Power Plan, should it come. It is not willing at this time to prophesy the future and impose $3.6 billion worth of increased costs on its customers. It has judged it prudent, and it is prudent, to be prepared but wait until the future actually happens to act.

Sierra Club, on the other hand, as it is want to do, sees the sky falling and prophesizes an apocalyptic climate of the future. Part of this vision is EPA's actions being the worst case scenario for the Labadie plant. "Shut it down," they say. Sierra Club would trade a $150 million investment for a course of action that is estimated to cost Ameren Missouri customers approximately $3.6 billion, all based on a prophesy that is to the Sierra Club's liking. This is not prudent planning. It is a political agenda. The Commission should not adopt the political agenda of the Sierra Club over the prudent planning of Ameren Missouri. The citizens of the state of Missouri and the members of UFM deserve better. If these costs do come to pass, the Commission should attribute them (figuratively speaking) to the responsible parties: the EPA and the Sierra Club.

Respectfully submitted,

By /s/ David C. Linton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email to all parties by their attorneys of record as provided by the Secretary of the Commission on the 10th day of April, 2015.

/s/ David C. Linton
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