

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

SIERRA CLUB,

Plaintiff-Intervenor,

v.

AMEREN MISSOURI,

Defendant.

Civil Action No. 4:11-cv-00077-RWS

**AMEREN'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS
MOTION TO MODIFY THE COURT'S REMEDY RULING**

Ameren Missouri ("Ameren") submits this second supplemental brief in support of its Motion to Modify Remedy Ruling (ECF #1196, the "Motion").

On December 14, 2021, Ameren moved this Court to modify its Remedy Order to allow Rush Island Energy Center ("Rush Island") to be retired in lieu of meeting a specified emissions limit and installing wet flue gas desulfurization ("FGD"). (ECF #1196.) On June 8, 2022, Ameren filed a supplemental brief regarding the determination of the Midcontinent Independent System Operator ("MISO") that Rush Island was needed as a backstop to help maintain the reliability of the transmission system, and MISO's resulting designation of Rush Island as a System Support Resource ("SSR") for a 12-month period from September 1, 2022 through August 31, 2023. (ECF # 1213.) MISO recently updated its analysis of transmission system reliability to assess current 2023 conditions, has determined that Rush Island must remain an SSR for another 12-month period, and has renewed the SSR Agreement through August 31, 2024. The risk of substantial

grid failure in the St. Louis area remains a possibility, particularly during the peak summer air-conditioning season, which typically persists through September and into early October.

In light of MISO's determination, Ameren now asks the Court to extend the March 30, 2024 compliance deadline set forth in its Remedy Order through and until October 15, 2024, at which time Rush Island will permanently cease operations. As shown in prior filings and below, the public interest in assuring the continued and uninterrupted functioning of the power grid warrants this limited extension. Under *eBay Inc., v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), the benefits to the public considerably outweigh any potential detriments of the requested extension, which is of brief duration. Emissions of SO₂ from Rush Island are at a fraction—approximately 16%—of the levels that prevailed before Rush Island became an SSR; indeed, they approach the annual emission rates of Rush Island had FGD been installed.

I. Background and Current Status

A. MISO Has Concluded that Rush Island Must Continue as an SSR.

In Ameren's prior filings, we described how MISO performed its Attachment Y reliability analysis to assess the impact of Rush Island's retirement. As MISO explained in a June 2022 Declaration, MISO's analysis determined that, without Rush Island being available to operate, there would be a risk of numerous grid stability violations. (ECF #1213-5 (MISO/Witmeier Decl.) at ¶¶ 8-9.) This included risk of outages due to a shortfall in voltage regulation resources in and around the St. Louis area during the summer air-conditioning season of June through September. Accordingly, after considering comments from the public and interested stakeholders, MISO determined that it was necessary to designate the Rush Island units as SSR units. (Declaration of MISO's Sumit Pal Brar, Ex. 1 hereto ("MISO Decl.") at ¶ 2.) As required by MISO's Tariff, MISO then entered into an SSR Agreement with Ameren and filed that Agreement with the Federal Energy Regulatory Commission ("FERC") on August 19, 2022. (*Id.* at ¶¶ 2-3.) The SSR

Agreement specifically stated that “Operation of Rush Island Units 1 and 2 is subject to orders issued by the United States District Court for the Eastern District of Missouri in *United States v. Ameren Missouri*, No. 4:11-cv-00077-RWS.” (*Id.* at ¶ 4.)

MISO recently conducted another analysis of transmission system reliability in order to ascertain whether Rush Island Units 1 and 2 would continue to be needed for reliability purposes under current conditions. MISO once again determined that Rush Island Units 1 and 2 are needed to address reliability risks on the transmission system. (*Id.* at ¶¶ 5-6.) MISO’s analysis determined that, in the summer peak case, without Rush Island there would be four grid stability violations that do not meet voltage recovery criteria and that result in over 1,000 MW of load loss; two violations could result in over 500 MW of load loss. (*Id.*) As it did in 2022, MISO again took public comment as to whether there existed a feasible alternative to SSR designation of Rush Island Units 1 and 2. Stakeholders could not identify any such feasible alternative. (*Id.* at ¶ 6.)

Accordingly, MISO designated Rush Island Units 1 and 2 as SSRs for another 12-month period and determined that Rush Island should be subject to a second SSR agreement covering September 1, 2023 through August 31, 2024. (*Id.* at ¶ 7.) As stated in MISO’s Tariff, SSR status “shall be for a term of twelve (12) months, unless the Transmission Provider [i.e. MISO] requires a different term.” (MISO Tariff Section 38.2.7f.) (*Id.* at ¶ 6.) The new SSR Agreement contains the same terms and conditions as in the prior agreement, including specifically providing that the Rush Island Units may only operate as allowed by, and in accordance with, orders issued by this Court. (*Id.* at ¶ 7.)

B. Rush Island’s Emissions Have Been Dramatically Reduced.

Since the Rush Island units became SSRs in September 2022, they have operated much less often—82% less often than during the same period in the prior year.

Period	Megawatt-Hours Generated (total, both units)	Operating Hours (total, both units)
Pre-SSR: Sept. 2021—July 2022	6,622,664	12,398
SSR: Sept. 2022—July 2023	1,052,865	2,172
Percent Reduction:	84%	82%

(Declaration of Andrew Meyer, Ex. 2 hereto (“Meyer Decl.”) at ¶ 6.)

Emissions of SO₂ have been reduced by a similar amount:

Period	SO₂ Emissions, tons (total, both units)
Pre-SSR: Sept. 2021—June 2022	14,831
SSR: Sept. 2022—July 2023	2,384
Percent Reduction:	84%

(Meyer Decl. at ¶ 6.)

C. Projects to Ensure Transmission System Reliability Are on Schedule, Allowing for Rush Island to Retire in October 2024.

Ameren explained in its prior filings that certain transmission system projects would need to be undertaken to ameliorate negative impacts to grid reliability resulting from Rush Island’s impending retirement. (ECF #1213 at 8-14.) These projects include upgrades of various switchgear components to facilitate the transport of energy in the changed system and installation of all-new STATCOM components, which provide the voltage support resources necessary in the summer months. (*Id.* at 10-14.) Working with MISO, Ameren expeditiously obtained MISO’s approval for these projects in 2022, bid them out, and awarded contracts to multiple vendors.¹ Collectively, these projects will cost Ameren approximately \$164 million. (Meyer Decl. at ¶ 10.) The reliability equipment that MISO deemed necessary will largely be installed before summer

¹ Ameren could not request an Attachment Y study from MISO to evaluate the reliability impact of Rush Island’s retirement until a definitive decision had been made to retire the plant. “[T]he decision to retire or suspend must be definitive at the time of Attachment Y Notice submission[.]” *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC P 61,214, ¶¶ 2-3, 2018 WL 4625672, at *1 (Sep. 25, 2018).

2025. Most notably, three of the four STATCOMs are set to be operational by December 2024, with the last STATCOM set to be operational in June 2025. (*Id.*) These installations will obviate the need for Rush Island's operations in winter of 2024-25 and summer 2025.

II. The Court Should Set a New Compliance Date of October 15, 2024

As discussed above, MISO has determined that it is necessary for Rush Island to remain available to operate to ensure grid stability and reliability through August 31, 2024. By the end of 2024, however, sufficient reliability projects will be operational to obviate the need for Rush Island's continued operation in the winter of 2024-25 and summer 2025. Because MISO's Tariff provides that SSR status is determined only for 12-month periods, MISO has not yet studied the period after August 31, 2024, and has not taken a position on whether Rush Island will remain an SSR after that date, because according to MISO, "such analysis would be premature" at this time. (MISO Decl. at ¶ 6.)

This poses a mismatch in timing between the air-conditioning season and the SSR Agreement. The August 31, 2024 end date of the new MISO SSR Agreement does not line up with the end of the 2024 summer air-conditioning season, a season which can continue past August. Should system conditions warrant, MISO may need to call upon Rush Island to operate for reliability purposes. For example, MISO called upon Rush Island to operate in both September and October of 2022. (Meyer Decl. at ¶ 5.) In addition, providing for a brief buffer period between September 1 and October 15 will allow for an orderly transition and wind-down of plant operations. Again, the Rush Island plant would not operate during this period unless called upon to do so by MISO.

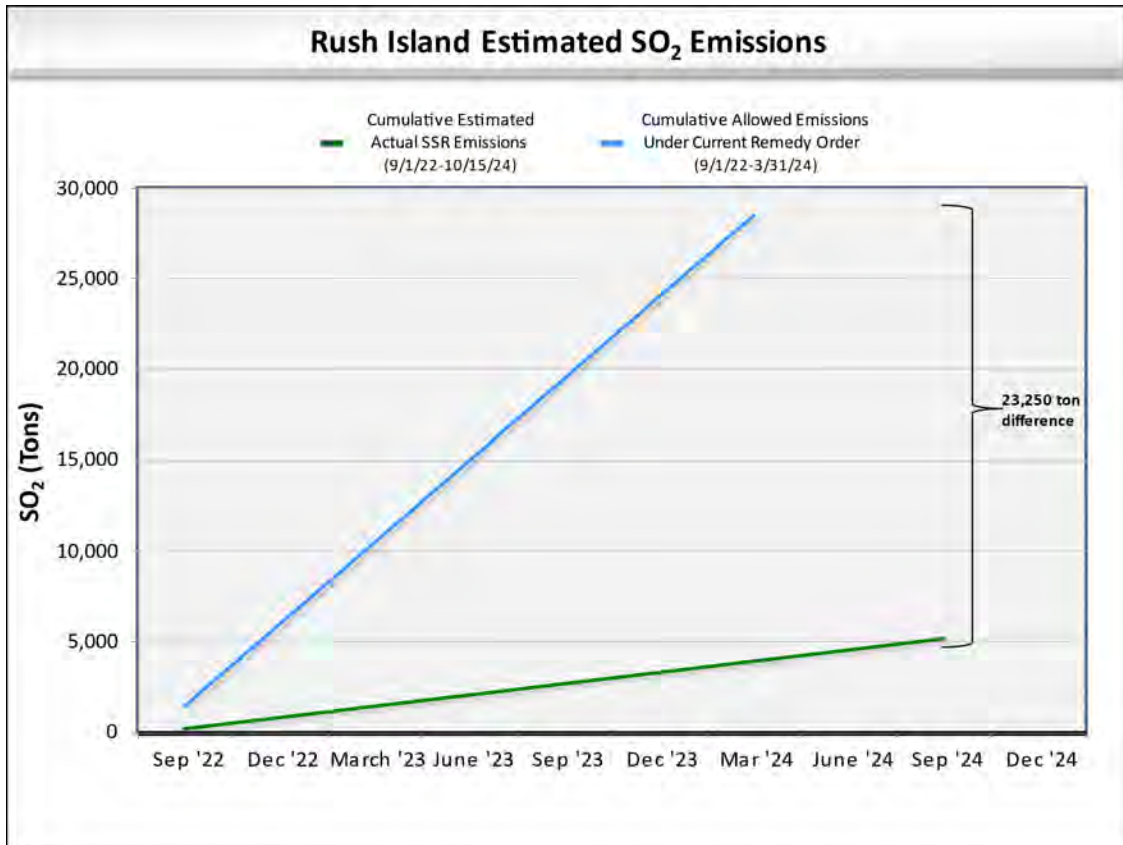
For these reasons, Ameren respectfully requests that the Court extend the current compliance deadline of March 30, 2024 to and until October 15, 2024, and order the Rush Island units to permanently retire on that date.

Extending the compliance deadline will serve the public interest. Congress has declared that “transmitting . . . electric energy for ultimate distribution to the public is affected with a public interest” and that “the transmission of electric energy in interstate commerce . . . is necessary in the public interest.” 16 U.S.C. § 824(a). Most importantly, as explained above, allowing Rush Island to continue serving as an SSR during the summer of 2024 will help ensure grid reliability throughout the peak air-conditioning season. (MISO Decl. at ¶ 6.) Without Rush Island’s continued SSR service, MISO’s analyses show that customer service outages of over 1,000 megawatts are possible. (*Id.*)

Extending the compliance deadline will not harm the public interest, including as compared to the terms of the current Remedy Order. Even if allowed to continue serving as an SSR through October 15, 2024, Rush Island’s cumulative emissions will be less than those allowed under the existing Remedy Order. To be more specific, the Remedy Order required Rush Island to comply with an emissions limit by March 30, 2024, but placed no limitation on Rush Island’s emissions before that date. Before it became an SSR, Rush Island emitted about 18,000 tons of SO₂ per year on average. (Meyer Decl. at ¶ 7.) By contrast, as an SSR, Rush Island is now emitting SO₂ at a rate of less than 2,500 tons per year. (*Id.* at ¶¶ 6-9.)

Because Rush Island’s SSR operations and emissions are so low, even with an extension of the compliance date, cumulative actual SSR emissions (shown below in green) will be far lower than the emissions allowed by the Remedy Order (shown below in blue).²

² Under the current Remedy Order, in the 18-month period from September 2022 through the March 2024 compliance date, Rush Island would have been expected to emit a cumulative total of about 28,500 tons of SO₂ (just over 1.5 years at 18,000 tons per year). But even accounting for extending the compliance date to October 15, 2024, Rush Island can now be expected to emit a cumulative total of about 5,250 tons of SO₂ (just over 2 years at 2,500 tons per year). (Meyer Decl. at ¶ 9.)



Indeed, Rush Island’s annual emission rates as an SSR are so low that they are close to what emissions would be if scrubbers had been installed.³

And because of Rush Island’s greatly reduced operations, emissions of all other pollutants (CO₂, nitrogen oxides, particulate matter, and mercury) will be far lower (approximately 84% lower) than under the existing Remedy Order. The existing Remedy Order required no reduction in emissions of any of these pollutants. (ECF #1123.) Such avoided emissions further benefit the

³ Rush Island’s annual pre-SSR emissions of SO₂ were 18,140 tons/year. Its current SSR emissions are about 2,500 tons/year or less. Thus, the annual emission rates are about 15,600 tons per year lower. This compares favorably to the annual emission rates of Rush Island if scrubbers had been installed. EPA’s expert witness calculated the emissions that would be avoided if Rush Island was scrubbed to be of a similar quantity: 16,135 tons of SO₂ per year. (See Excerpt of December 15, 2017 Expert Report of J. Staudt, Ex. 3 hereto, at 52 (“The average of the past five yearly excess emission rates are calculated to equal 8,227 tons per year for Rush Island 1 and 7,908 tons per year for Rush Island 2. These may be used to estimate excess emissions after 2016 and until controls are installed. The total annual excess emissions are 16,135 tons per year.”) (emphasis added).

public interest, and the Court should consider these benefits when conducting its injunctive-relief balancing analysis under *eBay Inc., v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

Finally, setting a date certain for Rush Island’s retirement, now, will provide additional benefits to Missouri and other stakeholders, including regulatory agencies like the Missouri Public Service Commission, the Missouri Department of Natural Resources, local taxing authorities, Rush Island employees, and others. Certainty has value, as does having sufficient advance notice to plan for the changes that will follow retirement.

For these reasons, allowing an extension of the compliance deadline, from March 30, 2024 to October 15, 2024, will benefit the public interest. On balance, the benefits to the public of ensuring the reliability of the transmission grid provided by Rush Island’s continued SSR status, the avoided emissions of all pollutants due to reduced operations, and the certainty provided to public stakeholders, all outweigh any detriment of the (much reduced) SSR operations during the brief extension period.

III. Section 202 of the Federal Power Act

Last, Ameren raises a final point regarding a potential need for Rush Island to operate in order to deal with emergency grid conditions. Ameren does not seek any modification to the Remedy Order in connection with this issue; it merely wishes to inform the Court of this future possibility.

In recent years, there has been an increase in applications to the Department of Energy (“DOE”) of Section 202 of the Federal Power Act, at times acting at the request of state or local authorities, or regional system operators like MISO, to deal with emergencies affecting the bulk electric system. Section 202(c) provides the Secretary of Energy certain authority to compel power plants to generate during grid emergencies, even if it means that those plants must exceed emission limits. 16 U.S.C. 824a(c). Operators like Ameren cannot seek Section 202 orders.

DOE may invoke Section 202 due to extreme weather events, such as Winter Storm Uri that affected Texas in February 2021, or other similar events. For example, in September 2021, California was experiencing ongoing wildfires, extreme heat, and droughts, which caused both a diminished ability for the state to generate hydropower, and higher than usual electricity demand. CAISO, the California system operator that is the equivalent of MISO, asked the Secretary of Energy to “authoriz[e] specific electric generating resources (Covered Resources) located within California to test and operate at their maximum generation output levels when directed to do so by the CAISO, notwithstanding air quality or other permit limitations.” (*See* Dept. of Energy Order No. 202-21-2 (Ex. 4 hereto) at 3.) The Secretary granted the request, subject to certain conditions, and granted CAISO the authority to dispatch those units to “preserve the reliability of the bulk electric power system in California.” (*Id.* at 5.) Such must-run orders under Section 202 are typically short in duration, lasting a week or less.⁴

As noted, Ameren does not seek any modification of the Remedy Order to address future potential Section 202 orders, nor does Ameren suggest how the Court should respond to such a petition, should one be made. Rather, Ameren merely seeks to make the Court of aware of this statutory mechanism.

IV. CONCLUSION

The Court should grant Ameren’s motion to modify the Remedy Order (ECF #1196), as supplemented (*see also* ECF #1198, #1201, #1208, #1210, #1213, #1225) and should:

⁴ PJM Interconnection (Dec. 24, 2022 – Dec. 26, 2022); Electric Reliability Council of Texas (Dec. 23, 2022 – Dec. 25, 2022); Balancing Authority of Northern California (Sep. 4, 2022 – Sep. 8, 2022, extended to Sep. 11, 2022); California Independent System Operator Corporation (Sep. 2, 2022 – Sep. 8, 2022, extended to Sep.12, 2022); California Independent System Operator (Sep. 10, 2021 – Nov. 9, 2021); Electric Reliability Council of Texas (Feb. 14, 2021 – Feb. 19, 2021); California Independent System Operator (Sep. 6, 2020 – Sep. 13, 2020); CenterPoint Energy Houston Electric (Aug. 27, 2020 – Oct. 12, 2020); Dominion Energy Virginia (June 16, 2017 – Sep. 14, 2017, Extended to Dec. 13, 2017); Grand River Dam Authority (Apr. 14, 2017 – Jul. 15, 2017).

1. Order that retirement of Rush Island will obviate the need to install FGD controls, apply for a PSD permit, or meet an emissions limit of 0.05 lb/mmBtu;
2. Extend the compliance (retirement) date from March 30, 2024 to October 15, 2024, and allow Ameren to continue to operate both Rush Island units during that time, though only as directed by MISO; and
3. Order that Ameren shall terminate operation of Rush Island's coal-fired boilers (units 1 and 2) no later than 11:59 PM on October 15, 2024.

Dated: August 1, 2023

Respectfully submitted,

/s/ Matthew B. Mock

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2023, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which will cause an electronic copy to be served on all counsel of record.

/s/ Matthew B. Mock

Matthew B. Mock