BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re: Union Electric Company's	)	
2011 Utility Resource Filing pursuant to	)	File No. EO-2011-0271
4 CSR 240 – Chapter 22.	)	

POST-HEARING REPLY BRIEF OF AMEREN MISSOURI

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I. Introduction

The filing of Reply Briefs in this docket occurs only two days short of a year since the Company submitted its Integrated Resource Plan (IRP) filing. Since that time, some of the initial assumptions underlying the IRP have changed, and those will be updated through the annual update process reflected in the Missouri Public Service Commission's (Commission) revised[1] IRP rules. The Company also previously filed a modification of its preferred plan due to other changes occurring since that time, as also contemplated by the revised IRP rules. Approval of the Company's Missouri Energy Efficiency Investment Act (MEEIA) filing will result in the selection of a third preferred plan. All of this serves to demonstrate a point the Company has made all along: resource planning is an on-going process; by contrast, a particular IRP filing, including the IRP filing at issue in this docket, reflects the state of a utility's plan at a single point in time – as of its filing. This reality is reflected in the fact that an IRP does not result in approval or disapproval of a particular plan; rather it is an evaluation of whether the utility complied with the requirements of the IRP rules.

While the record in this case contains alternative methodologies or inputs which other parties would *prefer* the Company to have used in its planning process that led to the IRP filing at issue here, there are only two questions in an IRP case: did the *process*

[1] The revised IRP rules were effective June 30, 2011, which was after the IRP at issue in this docket was filed.

follow the IRP rules and did the resource acquisition strategy comply with 4 CSR 240-22.010(2)(A)-(C)?[2] If the Company completed the required calculations and evaluations, then it has complied with the process. If the Company has complied in particular with the steps prescribed in 4 CSR 240-22.010(2)(A)-(C), then the resource acquisition strategy complied. It does not matter whether others would have used different values or assumptions or even if they would have made a different decision. The Commission's IRP process is not designed to force a partic&ular outcome; instead, it is designed to ensure that the Company undertook a robust planning process to "…provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest."[3]

This Reply Brief will start with the two major issues addressed by the majority of other parties in this case and then address the remaining issues, organized by the party that made the assertion being addressed.

II. Legal and Practical Restrictions

As discussed in the Company's Initial Post-Hearing Brief, there are a multitude of reasons why the Commission should not do more than ensure that Ameren Missouri undertook the planning process as required by the Commission's rules. Without repeating the legal analysis contained in the Company's Initial Brief, it is important to remember that utility resource decisions are left, by law, to the management of the utility and that the Commission's role is determining the prudence of those decisions, normally

[2] Ameren Missouri filed its IRP under the Commission's previous IRP rules, so all citations in this brief are to the version in effect on February 23, 2011, unless otherwise noted.
[3] 4 CSR 240-22.010(2)

within a rate case. Past Commission decisions have acknowledged this limitation, starting with the Order of Rulemaking from the original IRP rulemaking docket.[4]

The arguments raised by some of the parties in this case not only ignores the purpose of the Commission's IRP rules but actually advocates for the Commission to go beyond its authority and to force adoption of a preferred plan which is not in the best interest of the public. Adopting Staff's position in this case would require the Commission to force the Company to adopt a resource acquisition strategy which all parties know will result in the Company losing revenues and being unable to recover the costs imposed by that resource strategy.[5] The Commission should recognize the legal constraints that prevent it from adopting the other parties' arguments, and resist the temptation to "manage" the utility into a very real revenue loss.

In this Reply Brief, the Company will address each of the alleged deficiencies raised in the other parties' initial post-hearing briefs, and explain instances when a party has suggested a remedy which infringes upon the right of the Company's prerogative to make management decisions, and address instances where a party has incorrectly interpreted or applied a provision of the IRP rules.

III. Ameren Missouri's Filing Complies with the Commission's IRP Rules

A. PVRR

This issue (which is the one that appears to have spawned the largest volume of comments) arises from the requirement in the IRP rules that the minimization of the

[4] *Order of Rulemaking*, Docket No. EX-92-299, December 8, 1992. In this order, the Commission noted that it was, "…wary of assuming, either directly or in a de facto fashion, the management prerogatives and responsibilities associated with strategic decision making, preferring to allow utility management the flexibility to make both overall strategic planning decisions and more routine management decisions in a relatively unencumbered framework." At that time, the Commission also noted that the IRP rules are not designed to "dictate either the strategic decision itself or the decision-making process."
[5] Tr. p. 75, l. 21 through p. 76, l. 6; p. 60, l. 7-12.

present worth of long-run utility costs is to be used as the primary selection criterion for the preferred plan. (4 CSR 240-22.010(2)(B)). This is more often referred to as "present value of revenue requirement" or PVRR. PVRR means the revenue requirement, on a present value basis, for the 20 year preferred plan. PVRR does not consider what revenues will or will not be achieved; it only looks at the revenue requirement itself. Whether the utility can achieve those revenues is not part of the PVRR calculation. For example, PVRR does not include the impacts of energy efficiency efforts upon the Company's revenues (e.g., lost revenues are not reflected or considered in the PVRR calculation).[6]

Ameren Missouri has demonstrated that PVRR was its *primary* selection criterion consistent with the plain and simple meaning of the word "primary." Staff, OPC, DNR and NRDC all offer their opinions about what the word "primary" means and, as part of their argument, they erect a host of straw-man arguments about how certain definitions for "primary" may or *may not* lead to abuse in *future* utility IRP filings, all of which ignore what has actually happened in *this* case.

Before addressing the myriad of opinions expressed by the other parties, it must be pointed out that there is one fact which all of these parties have completely ignored: whether one weights PVRR as the Company did, or as others opine they would have done, does not matter. At the stage of the planning process where the weighting of PVRR comes into play (*see* 4 CSR 240-22.010(2)(B)), all of the optional plans with the lowest PVRR included energy efficiency investments designed to achieve the realistic

[6] Ex. 5, p. 13, l. 20-23. (Michels Surrebuttal); Tr. p. 198, l. 2-5.

achievable potential (RAP) level of energy efficiency savings.[7] Accordingly, changing the weightings used by Ameren Missouri would not have changed the results.[8] The real disagreement stems from the rule provision addressed in the next section of the Commission's rules, 4 CSR 240-22.010(2)(C), which reflects the fact that PVRR alone is not the determinative factor; that is, other considerations can constrain or limit choosing a plan that may have a lower PVRR. Those constraints will be addressed below.

Turning to the arguments regarding the meaning of "primary," as used in the rule, the briefs of the other parties offer a multitude of interpretations. Before considering these arguments, however, the Commission must be mindful of the legal principles that control the proper interpretation of an administrative rule, including its own rule. Administrative regulations are interpreted according to the same rules as statutes.[9] When statutory language is clear, courts (and in the first instance, this Commission) must give it effect as written.[10] Because statutory (rule) interpretation is a question of law, the Commission's determination is subject to *de novo* review by the courts. A court has no authority to read into a statute a legislative intent contrary to the intent evident in the plain language.[11] A court should regard a statute as "meaning what it says."[12] "A court may not add words by implication to a statute that is clear and unambiguous."[13] Finally,

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[7] Ex. 1, Chapter 10, p. 13, Figure 10.5; p. 14; p. 16; p. 18. (Ameren Missouri's Integrated Resource Plan, 2011).
[8] Ex. 2, p. 13 and p. 95.
[9] *Dept. of Social Svcs. v. Senior Citizens Nursing Home Dist. of Ray County*, 224 S.W.3d 1, 9 (Mo. App. W.D. 2007).
[10] *Emery v. Wal-Mart Stores, Inc.*, 976 S.W.2d 439, 449 (Mo. *banc* 1998).
[11] *Id*.
[12] *Id.* (citing *State ex rel. Bunker Resource, Recycling and Reclamation, Inc. v. Dierker*, 955 S.W.2d 931 (Mo. *banc* 1997)).
[13] *Emery*, 976 S.W.2d at 449 (citing *Asbury v. Lombardi*, 846 S.W.2d 196 (Mo. *banc* 1993)).

in ascertaining the plain meaning of statutory language, courts routinely look to the dictionary.[14]

The rule provides that PVRR is to be the "primary" selection criterion. "Primary" means "first in order or time or development"; "of first rank, importance or value."[15] It does not mean "sole" or "exclusive" or even "more than 50%". This is the same as the definitions contemplated in the original IRP rulemaking, as demonstrated in the Initial Comments of UE in that case.[16] No other definition has been offered by any of the other parties in this case.

None of the other parties' "interpretations" comport with the plain and ordinary meaning of the word "primary." Most notably, the Staff's interpretation of the word “primary” is such that it leaves little or no room for meaningful consideration of *any other* selection criteria. Specifically, the Staff asks the Commission to designate PVRR minimization as “the exclusive factor” for choosing the preferred resource plan unless the resultant plan would not meet the “fundamental objective” of the resource planning process. Such an interpretation doesn't make PVRR the first or leading criterion. To the contrary, it elevates PVRR to be the only criterion. Such an interpretation necessarily means that cost to customers is the only thing that matters as long as minimum thresholds are met with respect to safety, reliability, efficiency, rate impact, environmental stewardship or other attributes of utility service that the public values, without regard to whether improvements in such attributes beyond the bare minimum would justify their costs. "Primary" does not equal "only." It is impractical at best to attempt to define rigid

[14] *Fugate v. Jackson Hewitt*, 347 S.W. 81, 85 (Mo. App. W.D. 2011).
[15] *Websters's New Collegiate Dictionary. See also Black's Law Dictionary* ("Primary" is defined as "First; principal; chief; leading".).
[16] Ex. 9, p. 28. (Case No. EX-92-299, Initial Comments of UE.); Tr. p. 243, l. 7-25.

minimum standards for things like rate impact or economic development or even environmental stewardship beyond strict compliance with environmental regulations. But without doing so for each and every other attribute of "the public interest", planning rules that define cost minimization as "the exclusive factor" would have no basis by which to assess such considerations.

Additionally, although NRDC claims that the interests of customers and shareholders are entirely separate, the financial health of the utility and its ability to access capital to fund investments to serve customers is directly linked to the ability of customers to realize the full value of benefits that can be gained across the entire spectrum of utility service. NRDC's brief contains several citations for its proposition that the two groups are distinct, but not a single case cited is directly on point as to the question of whether the "public interest" includes the interests of Company shareholders. Not a single one of the cases even defines the phrase "public interest." Most of the cases cited discuss the Commission's obligation to balance allowing the utility to recover a just and reasonable return while protecting the consuming public.[17] This balancing is entirely consistent with Ameren Missouri's position in this case. As Mr. Wood testified, "…the public interest is…a balancing principal between customers expecting safe and adequate service and the utility having access to just and reasonable rates including [the]opportunity to earn a reasonable return on its investment."[18] Notwithstanding NRDC's assertions, this does not mean "public interest" is the public minus shareholders. To the contrary, it demonstrates that the public interest involves a balancing between the utility's financial interests and the interests of its customers in receiving safe and

[17] Hurricane Deck Holding Co. v. PSC, 289 S.W.3d 260, 268 (Mo.App. WD 2009) ; State ex rel. Laclede Gas Co. v. PSC, 600 S.W. 222, 226 (Mo.App. WD 1980);
[18] Tr. p. 61, l. 13-17.

adequate service at just and reasonable (but not necessarily the absolutely lowest possible) rates. The Commission has not made such a distinction and there is no evidentiary basis for it to make such an illogical distinction in this case.

An interpretation that elevates "primary" to "the only" would also clearly and unnecessarily bind utilities to a purely mathematical approach for making decisions. This contradicts both the spirit and the letter of the IRP rules. The rules are intended to ensure that utilities use a robust process for making resource decisions and to provide a transparent view into that process. This is made clear by the provisions and language of the rules, which allow for the selection *and weighting* of performance measures and selection criteria to be used by utility decision makers in arriving at a decision, as highlighted in the Company's Initial Post-Hearing Brief.

Finally, interpreting "primary" as "the only" would be to interpret the language of the regulation in such a way that it is in conflict with the long held legal principal that the Commission does not manage the utility. Creating a formulaic and nondiscretionary mathematical approach would substitute for the role currently, and correctly, left to the Company's management. Staff's interpretation of the rule in this matter must be rejected because it infringes upon the decision-making authority of utility management.

Staff and others argue that if the definition of "primary" is not as they suggest, claiming that Ameren Missouri and other utilities will be free to conjure up so many selection criteria as to render the primacy of cost minimization meaningless. This suggestion is nonsense. The Commission remains free to judge each IRP case based upon its compliance with the IRP rules at the time it decides each case. The examples provided by Staff and others, in which ten or more selection criteria are used with only slightly different weights, all involve scenarios where PVRR was not the "primary" selection criterion within the plain and ordinary meaning of the term. Those hypothetical cases have nothing to do with this case. As the Company has explained at numerous points in this case, PVRR was given a weight of 30% in selecting the preferred resource plan.[19] No other criterion was given a weight of greater than 20%. Staff's argument that PVRR was given only a "marginally greater percentage weight" than other selection criteria is false. PVRR was given a weight that was 50% higher than any other criterion. Consequently, PVRR was clearly the primary selection criterion used by Ameren Missouri's management, meaning Ameren Missouri has complied with both the letter and the spirit of the IRP rules.

Staff also attempts to buttress its argument by pointing to decisions by the Commission in adopting both the original and revised IRP rules and in a prior IRP case involving Kansas City Power & Light Company (KCP&L) (Case No. EO-94-360). The Commission's decision in the KCP&L case has little relevance to the debate currently before the Commission beyond the fact that it affirms the language in the Commission's rules regarding the use of PVRR as the primary selection criterion. This is because in that case, KCP&L had used average system rates as its *sole* criterion.[20] On those facts, it is obvious that KCP&L did not use PVRR as its first in rank, as its leading criterion, and it is thus obvious (as the Commission correctly determined) that KCP&L did not comply with the IRP rule. But the facts of this case bear no resemblance to the KCP&L case.

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[19] Ex. 5. p. 148, l. 14-20; Tr. p. 58, l. 10-13; Tr. p. 151, l. 11-14.

[20] Case No. EO-94-360, *Order Concerning Compliance*, p. 2. "The filings in this docket demonstrate that KCP&L used minimization of average system rates (ASR) as its **sole selection criterion** in connection with DSM planning." (Emphasis added.)

Staff's statements regarding prior rulemaking dockets are equally irrelevant. The Company's suggestions in those rulemaking dockets were made based on valid concerns about the ability of the Company to retain its legal decision-making authority. Additionally, those comments were based upon IRP framework sponsored by the Missouri Energy Development Association (MEDA), which would have made the result of the plan be the focus rather than the process. The Commission rejected this approach and so the comments referenced by Staff are irrelevant. Indeed, Staff notes that the Commission responded to the Company's comments in the original rulemaking docket by modifying the rules to encourage rate-minimization and flexibility. Whether or not the Company's initial suggestions were adopted by the Commission does not change the fact that the Company has conducted its planning in this case in compliance with the rules that were in effect at the time of its IRP filing. In doing so, the Company's management has chosen selection criteria that it believes support the fundamental objective of resource planning, a decision which state law properly leaves to the Company's management and not to the Commission or any of the other parties.

Not only must the Commission apply the rule as written, and give effect to what "primary" actually means (as opposed to what Staff and others now wish it meant), but even if the Commission were free to disregard its meaning it would be unwise and impractical to do so. The reality is that the weighting assigned to PVRR and to other criteria will change in different IRP filings, depending on circumstances facing a particular utility at a particular time. If the Commission is truly interested in obtaining a transparent view into utility management decision making, creating inflexible, prescriptive rules about the precise rank or importance that must be given to PVRR in every case will hinder that goal. By using the word primary, the Commission has given guidance regarding the importance of this particular selection criterion, and it does not need to go further. This will require the parties to evaluate and the Commission to determine if the weighting applied is consistent with the requirements of the rule on a case-by-case basis, but it is better to have that discussion in each case than have a percentage set solely for reviewers' convenience and without regard to the impact of that edict on the utility's planning process and decisions.

B. Other Considerations

After examining PVRR as the primary selection criterion, the rules require the utility to next examine other considerations. *See* 4 CSR 240-22.010(2)(C). Several of the other parties in this docket desire to effectively eliminate this provision of the rules entirely, as evidenced by their attempts to manipulate the definition of "primary" in 4 CSR 240-22.010(2)(B).

It is often said that regulation is to serve as a proxy for competition in markets where such competition is limited or does not exist. In that light, the Commission must ask itself whether the decisions made by utilities are similar to those that would be made by a business in a fully competitive market. The Commission's IRP rules make clear and unambiguous provision for just these kinds of considerations by explicitly allowing for the inclusion of "other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs."[21] This provision allows, without limitation, for the consideration of issues that may prevent selection of a resource plan that yields (in isolation) the mathematically determined lowest PVRR. Such

[21] 4 CSR 240-22.010(2)(C)

considerations may, and must, include the impact of a particular plan on the utility's right to have a reasonable opportunity to earn a fair rate of return, and thus impact the ability of the Company to raise the capital funds necessary to invest in infrastructure and other assets critical to the delivery of safe and reliable service at just and reasonable rates. Ameren Missouri has included analysis of three explicit "other considerations" and has labeled these considerations "decision factors", as described in the Company's Initial Post-Hearing Brief. Contrary to the objections of Public Counsel, these considerations were not simply "grafted onto the end of the process" with no forethought. Indeed one decision factor, used to consider the financing implications of large baseload plant investments, has long been an important consideration in the Company's decision making, and was specifically part of the Company's 2008 IRP case in which parties expressed concern over the viability of financing construction of a new nuclear plant.[22] As the Company described in its Initial Post-Hearing Brief, the DSM cost recovery decision factor serves a similar purpose in that it considers the Company's ability to access capital markets and to have its constitutionally guaranteed reasonable opportunity to earn a fair return on investment. Clearly, these are considerations that are critical to meeting the fundamental objective of the resource planning process.

As discussed above, it is important to note that the comments of Staff and other parties reflect a fundamental misconception; that is, that the weight the Company applied to PVRR resulted in selection of a preferred plan other than one that included a level of investment needed to support achieving the RAP portfolio of energy savings. It is undisputed that the weight assigned to PVRR did not do this. As the Company has explained in its testimony in this case and as summarized in its Initial Post-Hearing Brief,

[22] Case No. EO-2007-0409. See Final Order Regarding AmerenUE's 2008 Integrated Resource Plan, p. 11.

the selection of the preferred resource plan was constrained not by PVRR considerations, but rather by the DSM Cost Recovery Decision Factor. That factor is an "other consideration" as provided in the IRP rules and described above, and it is that factor that resulted in the selection of a preferred plan other than one that includes the RAP DSM portfolio.

DNR voices concern in its initial brief that the Company's preferred resource plan does not meet the statutory goal of MEEIA to achieve all cost-effective demand-side savings, indicating that the plan is not "consistent" with the State's energy and environmental policies. DNR's argument misconstrues MEEIA. MEEIA requires that the Commission align the financial incentives of utilities with helping customers to use energy more efficiently.[23] So while the MEEIA statute contains a *goal* of achieving all cost-effective savings, achieving that goal is subordinate to the *mandates* reflected in MEEIA.[24] As of this date, and as of the date of filing of the Company's 2011 IRP, this mandate has not been fulfilled. Because the Company would suffer severe financial harm[25] under its existing treatment for demand-side resources, its financial incentives are not aligned as MEEIA requires, and it is consequently severely constrained from selecting a plan with the RAP DSM portfolio until this mandate is met.

DNR attempts to argue that the analysis provided by the Company is not sufficient support for its decision to select a preferred plan without a level of DSM investment designed to achieve RAP. However, in making its argument DNR does not dispute that the throughput disincentive exists, or that it creates a strong deterrent to the pursuit of what DNR would consider to be all cost-effective DSM. Instead, DNR focuses

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[23]Section 393.1075.3 RSMo (Cum. Supp.2011).
[24] Moreover, "cost-effective" is not simply judged from the perspective of customer rates.
[25] Tr. p. 55, l. 1-6.

on its belief that an analysis of numerous alternatives for DSM cost recovery would somehow provide more useful insight about how to deal with the constraint it admits exists. As Mr. Michels stated in his surrebuttal testimony, there was nothing to be gained by conducting analyses of alternative methods to address DSM cost recovery in the Company's IRP because the requirements of the MEEIA rules at the time the IRP analyses were conducted were far from clear, which effectively precluded such analyses, and because it is not important how the disincentives to DSM are addressed, only that they are addressed in some way.[26] Mr. Michels also points out in his surrebuttal testimony that addressing the throughput disincentive has no impact on PVRR because PVRR does not capture the impacts of the throughput disincentive.[27] Since PVRR represents the cost to customers in the context of so-called "perfect ratemaking" (which in the real world does not exist), a PVRR analysis does not capture the lost revenue resulting from reductions in sales associated with energy efficiency programs. Consequently, DNR's contention that the Company has not documented its process and rationale for assessing tradeoffs between PVRR and the DSM Cost Recovery Decision Factor is completely without merit. A simple reading of the IRP Executive Summary (Chapter 1) and the elaboration in Chapter 10 clearly indicates that the Company considers addressing the throughput disincentive to be a threshold issue. That is, if it is addressed in *any* reasonable way, which can only truly be determined through a filing under the Commission's MEEIA rules (that could not have been made during the time in which the IRP was prepared and filed), then it allows for pursuit of all cost-effective energy efficiency. The Company's pending request in its recent MEEIA filing represents

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[26] Ex. 5, p. 16, l. 2-14.
[27] Ex. 5, p. 13, l. 22 through p. 14, l. 4.

just such a reasonable approach and presents it in the only proper forum for a Commission decision on this matter.

C. Other Deficiencies Alleged by OPC

OPC asks the Commission to order Ameren Missouri to change certain assumptions, re-perform its IRP analysis and select a new preferred resource plan. It does so on the purported basis that the Company's IRP analysis is flawed in such a way that it cannot be relied upon for decisions by the Company's management or by the Commission. This is simply not true. As the Company has shown through voluminous testimony in support of the Company's analysis and in response to allegations of the parties, Ameren Missouri's 2011 IRP provides a thorough and rational evaluation of resource needs, options, and plans and their costs and performance across a range of measures and attributes. That OPC or any other party disagrees with the final decision does not mean that the analysis is invalid. Public Counsel highlights four areas of concern in its initial brief, restates the issues it alleged in its June 2011, report to the Commission, and flippantly accuses the Company of ignoring its analysis, manipulating results and misleading its Board of Directors. OPC's claims have no basis in fact. The four areas of concern highlighted by OPC will be addressed here one at a time.

OPC first charges that Ameren Missouri has rejected the opportunities afforded by energy efficiency. It bases its claim on its argument about what "primary" means in relation to PVRR and on its arguments regarding other considerations. We have already addressed and disposed of those arguments above and will not repeat them here. OPC also bases its charge on allegations that the Company has not evaluated a wide enough range of demand-side resources and has not more realistically evaluated its industrial demand response (IDR) program or other non-dispatchable demand response (NDDR), as directed by the Commission in its Order in Ameren Missouri's 2008 IRP. Regarding the latter, the Company had previously pointed to the fact that a revised program for NDDR was evaluated and included in both the RAP and maximum achievable potential (MAP) DSM portfolios,[28] and that those results reflected significantly higher incentives supported by market information from a demand response request for information (RFI). Staff's similar concern was also disposed of by this response, and OPC did not subsequently challenge the Company's response on this issue.

Regarding the evaluation of a wide range of demand-side resources, the Company's earlier response demonstrated that it had evaluated five unique energy efficiency portfolios, four of which result in greater peak demand savings than that included in the Company's 2008 IRP.[29] OPC did not subsequently challenge the Company's response on this issue either. OPC asserts in its brief that the Company should have used an optimization model to select an appropriate level of demand-side resources. However, as the Company pointed out, the mix of demand-side resource was evaluated to determine whether portfolios with energy efficiency resources or more demand response resources produced lower costs.[30] This analysis showed that relying first on energy efficiency then on demand response to meet resource needs resulted in the lowest cost. OPC's subsequent challenge to this response is based on the notion that the Company should plan to acquire resources even if they are not needed if they might be expected to reduce costs. The Company has only assumed the addition of new resources,

[28] Ex. 2, Exhibit A to Response, p. 22, (Response of Ameren Missouri to Alleged Deficiencies and Concerns.)
[29] *Id.*, p. 29.
[30] *Id.*, p. 12.

either supply side or demand side, when they are needed to meet load and reserve margin requirements in the planning horizon.[31] In that way, supply-side and demand-side resources have been evaluated on an equivalent basis as required by the IRP rules. Based on the evidence in the record, there is no basis for the Commission to conclude that Ameren Missouri has not evaluated a more aggressive approach to demand-side resources in this IRP. Consequently, on this record, the Commission must determine that the Company has thus complied with the Commission's Order in Case No. EO-2007-0409.

OPC next alleges that the Company is not taking necessary steps to plan for and respond to expected future environmental constraints. This claim is based on OPC's *opinion* that the Company's approach to modeling potential future environmental regulations is inappropriate and that it results in an "apples-to-oranges" comparison. Clearly this issue is one of preference about how to analyze a particular consideration and not one of whether the Company did or did not analyze such considerations. The Company has explained multiple times that it believes it is preferable to evaluate the kinds of environmental regulations embodied in the two scenarios developed by the Company as a decision factor precisely because they are different and because a different set of decisions would have to be made under each set of circumstances[32]. In fact, the plans themselves are unique to the specific environmental regulations assumed. To try to fuse these two different scenarios together and generate plans that are a "hybrid of an apple and an orange" ignores the real possibility that one may need an "apple" or one may need an "orange", and it is important to know what kind of each is most appropriate.

[31] *Id.*, p. 30.
[32] *Id.*, p. 55-56; Ex. 5, p. 33- 36.

It is not necessary that all plans be comparable if there is an important consideration, such as the vast range of environmental regulations under development, which warrants evaluation of multiple distinct possibilities. The fact is that the Company has rigorously evaluated and continues to evaluate the development of environmental regulations, the options for compliance with those regulations and the implications for resource planning in general. That OPC would have gone about it differently is irrelevant to whether the Company has complied with the process reflected in the IRP rules.

Third, OPC claims that the Company is downplaying opportunities available from renewable resources. This is another case in which the issue is one of preference; that is, a matter of opinion as to what assumptions and analytical approach should be followed as opposed to whether the Company has complied with the requirements of the IRP rules. OPC's claim is based on its opinion that 1) it is not necessary to add other capacity resources when adding wind, 2) that modeling 800 MW of wind installed at the same time somehow biases the results of wind plans when compared to a gradual build, and 3) that Ameren Missouri's use of an average cost and capacity factor for wind ignores variability in costs and capacity factors. These arguments ignore the fact that, absent the installation of 5,000 MW of wind, which at the time of the IRP analysis was only credited with 8% of its nameplate rating for MISO capacity planning purposes, some other capacity resource is needed and CTGs provide additional low-cost capacity.[33] The Company next pointed out that modeling 800 MW of simultaneously installed wind capacity is likely to produce results that are essentially the same as if the addition of wind

[33] Response of Ameren Missouri to Alleged Deficiencies and Concerns, August 22, 2011, Exhibit A, p. 59-68; Ex. 5, p. 78.

resources were spread across a number of years.[34] Finally, the Company has demonstrated that it modeled a "generic" wind resource as required by the IRP rules,[35] that its assumptions for wind cost are consistent with those found in documents published by the U.S. Department of Energy,[36] that it has, in fact, modeled a cost range for wind resources of $1710-2400/kW,[37] and that it has evaluated wind capacity factor as a candidate uncertain factor and found it not to be a critical uncertain factor.[38] In addition, when the Company evaluated wind resources to comply with the Missouri Renewable Energy Standard, the cost for the plans actually increased, thus indicating that adding generic wind resources to reduce costs as OPC suggests would not be valid or appropriate.[39] OPC asks the Commission to believe that by not evaluating opportunities for wind *right now*, the opportunity for cost-effective wind resources in the *future* will be lost. Efforts by the wind industry to seek further expansion of its markets through mandates (as opposed to support from the competitive market) provides ample evidence that this is not the case. In any event, the Company is not precluded by the IRP filing at issue here, which reflects a snapshot as of the time of its filing, from identifying and evaluating cost-effective wind resources that may become available in the future.

Fourth, OPC concludes that Ameren Missouri demonstrates a preference towards using new nuclear plants based on OPC's opinion that the Company's cost and construction duration estimates are low. Yet again, this is a matter of opinion regarding what values should be used for various assumptions rather than an actual deficiency in

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[34] Ex. 5. p. 83, l. 11 through p. 84, l. 4.
[35] *Id.*, p. 81, l. 21 through p. 82, l. 8.
[36] Ex. 2, p. 60.
[37] Ex. 5, p. 82, l. 3-5.
[38] *Id.*, p. 82, l. 6-8.
[39] *Id.*, p. 80, l. 22 through p. 81, l. 7.

meeting the requirements of the Commission's IRP rules. Still, the Company has shown that its costs are in line with information published by the U.S. DOE,[40] that its estimates for construction time are consistent with those of projects currently under construction,[41] that nuclear construction cost estimates are not subject to the same kinds of risks to which they were exposed 35-45 years ago and that recent increases in cost estimates have been driven primarily by increases in the global cost of construction materials.[42] OPC provides no other basis for its assertion that Ameren Missouri has somehow biased its IRP analysis in favor of nuclear power. OPC's ominous reference to the Company's "not insignificant" update to nuclear cost assumptions for its 2012 IRP Annual Update is a partial truth and a distraction. At hearing, Mr. Michels responded when questioned by Public Counsel that changes in the cost estimates for nuclear for the Company's 2012 IRP Annual Update were expected to be "less than dramatic but greater than slight."[43] Regardless of the Company's changes in assumptions following the filing of its 2011 IRP, OPC has provided no basis for a conclusion that Ameren Missouri's evaluation of nuclear resources does not comply with the Commission's IRP rules.

OPC also repeats its original allegations that Ameren Missouri management has misled its Board of Directors and the Ameren Board of Directors and that it has biased its scorecard in some way, raising a host of technical quibbles regarding the scoring performed by the Company. The former allegation is baseless conjecture that has been refuted by the Company, and the latter is nothing more than a difference in preferences on the development and use of decision tools. The Company responded to the assertions

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[40] Ex. 2, p. 84.
[41] Id, p. 83.
[42] Ex. 5, p. 91, l. 1 through p. 92, l. 5.
[43] Tr. p. 234, l. 4-7.

of Dr. Vitolo regarding the scorecard in Mr. Michels' surrebuttal testimony.[44] That discussion was fairly long and technical, so the Company will not repeat it here, except to say that its explanation has not been challenged. In short, the Company has shown that the issues raised by Dr. Vitolo are either invalid or relatively minor and that Ameren Missouri has appropriately considered the limitations of a scorecard evaluation in conducting its decision making process. Regarding OPC's assertions about the provision of misleading information to the Ameren and Ameren Missouri Boards, the Company has refuted this allegation by demonstrating the extent of information provided and the involvement of members of the Ameren Missouri Board in the decision making process.[45] Mr. Michels also points out in his surrebuttal testimony that the information provided by the Company with respect to this issue was sufficient to satisfy the same concern raised by Staff. OPC did not subsequently attempt to refute the facts presented by Mr. Michels and has not highlighted this issue as a chief concern in its initial brief.

In summary, OPC's request that the Commission order Ameren Missouri to overhaul its 2011 IRP analysis is without merit and appears based on the hope that numerous *allegations* of deficiency will confuse the Commission to the point that it will believe it must act. Indeed, there is no authority in the IRP rules, and no basis in fact, that would support a Commission order requiring the Company overhaul its analysis in the way OPC suggests.

D. Other Deficiencies Alleged by DNR

DNR, like OPC, asks the Commission to order Ameren Missouri to revise assumptions and reproduce its IRP analysis based on misinterpretations of technical

[44] Ex. 5, p. 47, l. 9 through p. 54, l. 17.
[45] *Id.*, p 43, l. 15 through p. 47, l. 8.

provisions of the IRP rules and of the Company's analysis and process. In addition to issues with respect to the use of PVRR as the primary selection criterion and the application of decision factors, both of which have been addressed previously in this brief, DNR also identifies five other issues about the IRP filing at issue here, and also raises an issue regarding the Company's October 25, 2011, Change of Preferred Plan. Because the Company's change in preferred plan is not relevant to the determination of compliance of Ameren Missouri's 2011 IRP filing, it will be addressed in a separate discussion in this brief. The remaining five issues are addressed in this section.

First, DNR asserts that the Company has not performed an appropriate contingency analysis in its IRP, charging that the Company's contingency planning is "based upon the assumption that demand-side cost recovery for lost revenue would never be a financially viable contingency." DNR's premise is false. The Company has not assumed that appropriate cost recovery is impossible, but rather has indicated that satisfaction of the mandate of MEEIA (alignment of utility and customer incentives for energy efficiency) must come in order for MEEIA's stated goal of achieving all cost-effective demand-side savings to be realized. In other words, the horse must come before the cart. That aside, DNR has further confused the issue by misinterpreting the Company's approach to contingency planning and the Company's subsequent defense of that approach. DNR argued that the Company did not perform the required contingency analysis and that the Company simply claimed without any support that there are no values of uncertain factors that would cause the Company to select a different plan as the preferred plan. This completely overlooks the fact that the Company's statement is a conclusion that flows *from* the analysis, not an excuse to skip it altogether.[46]

DNR argued that the same kind of contingency analysis that is applied to critical uncertain factors must also be applied to the Company's DSM cost recovery decision factor, that the Company must evaluate responses to "extreme outcomes" for this decision factor, and that the Company has not appropriately reflected consideration of this decision factor in its contingency planning. As Mr. Michels pointed out in his surrebuttal testimony, the Company has clearly reflected the role of the DSM cost recovery decision factor in its contingency planning by showing plans with RAP DSM as the contingency options, should utility incentives be appropriately aligned as required by MEEIA.[47] Mr. Michels further points out that the notion of "extreme outcomes" for this decision factor is not applicable because the decision factor itself is a threshold consideration.[48] That is, the condition is either met or it isn't. Demanding an assessment of extreme outcomes for the DSM cost recovery decision factor is like demanding an assessment of extreme outcomes for meeting the planning reserve margin. If the condition is not met then it is not satisfied at all. If it is met, there is no value in "meeting it more." DNR's application of the "extreme outcome" concept here is nonsensical and should be rejected by the Commission.

Second, DNR alleges that the Company did not evaluate future coal prices as a critical uncertain factor. While Ameren Missouri did not perform a screening analysis of coal prices for consideration as a critical uncertain factor, its scenario modeling analysis necessarily provided a sensitivity range for coal prices which were internally consistent

[46] Ex. 2, p.105-106.
[47] Ex. 5, p. 40, l. 10-12.
[48] *Id.*, p.40, l. 12-13.

with all the other market variables, such as natural gas prices and national load growth, that defined those scenarios.[49] In effect, the Company included coal prices as an uncertain factor for its risk analysis without first screening it. DNR argues that other second-tier uncertainties that affect the primary uncertainties (in this case coal prices) must also be identified, screened and analyzed. The IRP rules require no such evaluation. Rather, the rules simply require that the Company identify the "critical uncertain factors", a term that is specifically defined in the rules, which influence coal prices. The Company identified the critical uncertain factors that define the market scenarios it used as those critical uncertain factors – natural gas prices, load growth, and carbon policy – and thus complied with the requirements of 4 CSR 240-22.040(8)(A).

Third, DNR asserts that the Company has not considered the accuracy of previous forecasts in selecting providers of fuel price forecasts, in this case Charles River Associates (CRA). In rebuttal testimony, DNR witness Brian Smith testified that, "The IRP rule does not specify that a single forecast must be compared; it requires that consideration be given to historical forecast accuracy."[50] In so stating, Mr. Smith has recognized the impracticality of evaluating prior forecasts, which are necessarily based on ranges of assumptions about the future, in relation to actual conditions that occurred. Forecasts must simply produce reasonable results for the inputs used. However, the Company explicitly stated the credentials of CRA as evidence of their model accuracy and specifically footnoted this discussion in its IRP as its consideration of fuel price forecast accuracy in compliance with the rule requirement.[51] That rule does not specify

[49] Ex. 5, p. 70, l. 9-14.
[50] Ex. 24, p. 4, l. 75-77, (Smith Rebuttal). Mr. Smith's testimony did not contain page numbers, but the quote appears on the 4th page of testimony, excluding the cover sheet.
[51] Ex. 5, p. 65, l. 21 through p. 66, l. 3.

any requirement for a specific analysis, and it shouldn't. Rather, it simply requires, as DNR's witness stated, that consideration be given to historical forecast accuracy. The Company has done that, indicated the basis on which it did it, and indicated specifically that this was done to satisfy the rule requirement. As such, the Company has met the requirement of the rule.

Fourth, DNR claims that the Company failed to analyze the possibility of using power purchase agreements as a resource, charging that the Company "relied solely on its trading organization's judgment in dismissing the possibility of any long-term purchase power agreement." The Company's experience with the 2008 IRP showed that other companies are not interested in responding to RFIs on potential purchased power agreements (PPAs) in the context of an IRP because they have no reasonable assurance that their responses could result in a sales agreement.[52] Because reliable information could not be acquired through an external solicitation, the Company's trading organization was consulted to determine whether any pending offers were available for evaluation. There were none. DNR laments an absence of research, data gathering or steps taken, completely ignoring the primary practical constraint of the unavailability of reliable information to evaluate in the first place. DNR further confuses the evaluation of long-term PPAs with the Company's use of short-term purchases and sales to balance its capacity position, charging that the Company has suddenly assumed that PPAs are available in making its notification of change in preferred plan. The Company did not make such an assumption. It simply used the same base assumption it used throughout the IRP analysis that it would sell long positions or buy to cover relatively small short positions at the prevailing market prices for capacity.

[52] Ex. 2, p. 76-77; Ex. 5, p. 96, l. 7-15.

Finally, DNR alleges that Ameren Missouri has not fulfilled the requirements of a stipulation it entered with DNR regarding the evaluation of wind resources in Case No. EO-2007-0409. The stipulation first required a demonstration by Ameren Missouri that its assumptions regarding capacity factors are consistent with the most recent data for the best commercially available wind sites. As the Company indicated in its IRP filing, it used an 11-state region comprising the upper Midwest and central and northern plains[53], where the most promising wind resources are found, and calculated a range for average capacity factor of 31.4% to 43.5%.[54] As Mr. Hasselman indicated in his rebuttal testimony, "The upper end of the capacity factor range is supported by an analysis by the National Renewable Energy Laboratory…."[55] The Company maintains that its capacity factor assumptions are therefore consistent with the most recent data for the best commercially available wind sites. The stipulation then required that the Company demonstrate that its assumptions regarding the timing of transmission capacity upgrades and the allocation of costs associated with those upgrades are based on the most recent system planning studies and currently effective transmission cost allocation principles. The Company noted in its IRP that it had used an assumption based on rough estimates obtained from MISO that $25 billion in new transmission investment would occur over the planning horizon and be allocated based on the method requested by MISO at the time the IRP analysis was being conducted.[56] The IRP also noted that the final allocation method approved by FERC would result in only slight changes to the cost allocation and that all plans analyzed by the Company would be impacted by the same amount as a

[53] Ex. 1, Chapter 5, p. 31-32.
[54] *Id.*, Chapter 9, p. 18, Table 9.10.
[55] Ex. 21, p. 5, l. 97-98. (Hasselman rebuttal).
[56] Ex. 1, Chapter 6, p.7-8.

result. That is, cost allocation for MISO multi-value projects does not affect the *relative* performance of resource plans evaluated by the Company. In that way, the cost of transmission associated with integration of renewables was removed from the resource decision equation. The stipulation then required that the Company present scenarios for acquiring wind resources that identify the region being considered using multi-county areas, including estimates at various hub heights for wind density, transmission upgrades required and the levelized cost of energy under a PPA and/or an ownership arrangement. The Company evaluated not simply a multi-county region but a multi-state region, showed the calculation of levelized cost for turbines at both 80 and 100 meters[57] and chose to show its comparisons based on an ownership arrangement. The language of the stipulation did not require evaluation of *both* an ownership arrangement and a PPA arrangement, as DNR asks the Commission to believe. The Company has completed the analysis it agreed to do[58] and DNR's arguments on this point should be rejected by the Commission.

E. Other Deficiencies Alleged by NRDC

NRDC bases its recommendations to the Commission on three issues – 1) equivalent treatment of demand-side and supply-side resources, 2) use of PVRR as the primary selection criterion, and 3) assumptions for the cost of operating existing coal resources. The PVRR issue has been addressed previously in this brief, so the following discussion will focus on the other two issues.

NRDC charges that the Company has not treated demand-side and supply-side resources on an equivalent basis by relying on an expansive interpretation of the rules in

[57] *Id.*, Chapter 5, p. 33-34.
[58] Ex. 2, p. 62-65; Ex. 5, p. 85-88.

one instance, an unnecessarily restrictive interpretation in another instance, and a complete dismissal of the very financial concerns that drove the passage of MEEIA. NRDC's assertion that the IRP rules require a ground-up evaluation of all existing generating resources ignores both the practical constraints of complex resource planning analysis and the provisions of the rules that recognize these constraints. It also ignores the unique circumstances of existing resources relative to new resources. The rules require the Company to evaluate a variety of resource options, including life extension and refurbishment of existing generating units and enhancement of emission controls.[59] It does not require the complete reevaluation of all existing resources. Ameren Missouri evaluated life extension, refurbishment and enhancement of the emission controls at its Meramec Plant, the oldest coal plant in the Company's fleet.[60] Mr. Michels, in his surrebuttal testimony, explained the Company's rationale for using Meramec as a "test case" for the viability of the coal fleet, noting that controlling or retiring Meramec is roughly equivalent in terms of cost impact.[61] At hearing, Mr. Michels noted that although the absolute costs for controls at the Company's Labadie plant were higher than those for Meramec, the costs per kilowatt were significantly lower as are the costs per kilowatt for controls on the Rush Island plant.[62] The Company has also shown that the variable costs of operation for the Labadie and Rush Island plants are significantly lower than those for Meramec.[63] Having shown that the per-unit costs for other coal plants are lower than those for Meramec, and having shown that the cost to control Meramec is

[59] 4 CSR 240-22.040(1)
[60] Ex. 1, Chapter 4, p. 14-18; Chapter 9, p. 22.
[61] Ex. 5, p. 63, l. 17 through p. 65, l. 10.
[62] Tr. p. 4-5 (In Camera).
[63] Ex. 2, p. 44, Figure 3.2.

comparable or lower than that for retiring and replacing the plant,[64] the Company appropriately reached the obvious conclusion that the cost of controlling its newer, more efficient, lower-cost plants would be more cost effective than retiring them and replacing the capacity with either new supply resources or energy efficiency. The work NRDC suggests (a full analysis of all coal units) would be a waste of time and resources and would certainly take longer than the time allowed for developing an IRP. For that reason, it is inappropriate to demand that all resources, existing or new, be evaluated starting with a blank slate. Moreover, there is no requirement in the IRP that such an analysis be performed, so the fact that the Company has not completed such an analysis cannot be held to be a deficiency by the Commission.

NRDC, like OPC, takes issue with the Company's use of capacity need as the basis for constructing its alternative resource plans using supply-side and demand-side resources, insisting that the Company should add resources beyond those needed to meet load and reserve requirements for reliability on the basis that they may reduce costs. This view of resource planning should be rejected as a departure from a vertically-integrated regulated utility view to that of a quasi-merchant view.[65] The Company applied the same approach to the addition of both demand-side and supply-side resources, demonstrating the equivalent treatment that NRDC claims the Company ignored. NRDC attempts to argue that the inclusion of upgrades to existing units is somehow evidence of non-equivalent treatment. However, existing resources are uniquely situated in that the Company already owns the assets. Cost-effective upgrades of existing assets are no more evidence of non-equivalent treatment than preventative maintenance to maintain or

[64] Ex. 1, Chapter 9, p. 24, Figure 9.18.
[65] Ex. 2, p. 30.

improve availability. Both produce benefits that, through the Fuel Adjustment Clause, inure largely to customers. NRDC also claims that performing upgrades on existing units and continuing to operate Meramec increases PVRR without any basis in fact and in direct contradiction with the facts presented in the Company's analysis.

NRDC continues its argument on equivalent treatment by charging that the Company inappropriately evaluated the financial impacts of energy efficiency using ratemaking assumptions that were different from the "perfect ratemaking" used to determine PVRR. The ratemaking assumptions at each stage of the analysis were consistent for both supply-side and demand-side resources and plans.[66] PVRR was calculated for all plans using "perfect ratemaking", that is dollar-for-dollar recovery of all costs of service in the period in which they are incurred (though in fact such dollar-for-dollar recovery does not and cannot occur). Following the Company's risk analysis, a separate financial analysis was conducted using more realistic assumptions to account for the realities of the ability to file and time rate cases and other impacts of regulatory lag. This analysis was also performed on all plans at that stage of the analysis. For supply side plans, this analysis showed that certain plans (e.g., those including nuclear resources) may require alternative ratemaking to support financing needs. For plans that relied more heavily on demand-side resources, this analysis showed the impacts of lost revenue. NRDC's restrictive interpretation of the rules in this case means that no evaluation of resource choices under realistic assumptions for ratemaking would be allowed, an interpretation that is obviously at odds with the rules; that is, unless NRDC contends that the rules are designed to assist in long-term resource planning that no utility could or would actually implement. Certainly the intent of the rules is not to create a planning

[66] Ex. 2, p. 20-21.

process which cannot be practically implemented. NRDC's interpretation must be rejected by the Commission. In addition, the issues surrounding the incorporation of these supplemental analyses are more closely related to the use of "other considerations" which has been addressed previously in this brief.

NRDC's final claim with respect to equivalent treatment involves the elimination of plans including MAP DSM. Their argument focuses prominently on the definition of "Maximum Achievable Potential" and whether the Company's assumptions comport with a certain definition. Their entire argument is irrelevant. In the Company's IRP filing, plans with MAP DSM were eliminated only *after* full risk analysis was performed and *after* finding that the risk-adjusted cost for plans with RAP DSM were lower than that for plans with MAP DSM.[67] This risk analysis reflected uncertainty in the ability to achieve the levels of savings offered by each DSM portfolio and the costs required to achieve them.[68] As that table shows, achieving higher levels of savings comes with greater downside risk in their achievement. Further increasing the costs as NRDC suggests would simply go further beyond the already negative incremental returns of the MAP portfolio relative to the RAP portfolio established by the Company's analysis.

NRDC next turns to the costs of Ameren Missouri's coal fleet, arguing first that the costs of continued operation of the Meramec plant are understated, while dismissing (but not providing any evidence that rebuts) the specific and comprehensive expert engineering analysis upon which those estimates are based. Instead of actually offering evidence or expert analysis of its own to refute the Burns and McDonnell analysis relied upon by the Company, NRDC has relied on misinterpretations of assumptions and

[67] Ex. 1, Chapter 9, p. 21.
[68] *Id.*, Chapter 9, p. 18, Table 9.10.

results, while also ignoring the comprehensive explanations provided by the Company.[69] The Company showed that the real costs to operate its coal plants have been flat (or declining in the case of Labadie) while equivalent availability has improved. The Company also demonstrated that the capital costs assumed for continuing to operate Meramec are substantial.[70] In a final effort to salvage its argument on this issue, NRDC seeks to dismiss the entirety of the analysis by Burns and McDonnell by stating that Burns and McDonnell did not explicitly develop assumptions for the reduced capital costs that would be required if Meramec is operated in a baseload mode rather than a harsher cycling mode after 2025. The flaw in NRDC's theory, however, is that had Burns and McDonnell made such estimates, they would simply bolster the case for *continuing* to operate the plant because maintaining the plants for baseload operation does not cost as much as maintaining units for use in a cycling mode.[71] Consequently, the estimates NRDC says should have been made in fact prove the Company's case, and rebut the argument NRDC is attempting to make.

NRDC also argues that the cost of operating coal plants was understated because gas price assumptions were too high. This argument requires one to understand that the IRP process is not completed in a month or even six months. Indeed, the Company spent more than a year in preparing this filing. Accordingly, the Company's assumptions for gas prices were in line with other reliable estimates *at the time the Company performed its analysis*.[72] The fact that a large shift in the price of natural gas occurred after the Company completed its analysis does not create a deficiency in the IRP that was filed,

[69] Ex. 2, p. 45-52.
[70] *Id.*, p. 47, Figure 3.3.
[71] Tr. p. 10, l. 24 through p. 11, l. 24.
[72] Ex. 2, p. 69-71.

which as we have noted reflects the result of a planning process at a specific point in time. To the contrary, that the gas price assumptions might be different today if a new IRP were being prepared serves only to highlight the ongoing nature of resource planning. As the Company indicated it would do, and as the Commission ordered in its docket on Special Contemporary Issues, Case No. EO-2012-0039, Ameren Missouri is evaluating the impacts of lower gas prices on its resource planning analysis. Indeed, accounting for these kinds of changes is the reason the IRP rules contemplate examination of Special Contemporary Issues. Similarly, the fact that changes have occurred does not render the initial IRP filing deficient.

IV. DNR's Concerns with the Company's Change in Preferred Plan

DNR raises issues in its initial post-hearing brief with respect to the Company's Notice of Change in Preferred Plan filed in Case No. EO-2012-0127 on October 25, 2011. The comments of DNR in its brief do not seem to recognize that Ameren Missouri filed supplemental information on December 2, 2011, pursuant to the original comments of Staff to ensure compliance with the relevant rule provisions. On this basis, DNR asks the Commission to "not accept" the Company's notice for fear that it would imply the original IRP was compliant. This request is invalid for two reasons. First, the rule gives the Company the right to file such a notice, and neither contemplates nor requires any action on the part of the Commission. Consequently, there is nothing for the Commission to "accept or reject", unless of course the notice itself failed to comply with the notice requirements of the rule. There is no claim by any party, post the filing of the supplemental information, to indicate that this is the case. Second, any action on the Company's Notice does not relieve the Company from the requirement that its original

IRP filing comply with the IRP rules. The original IRP filing either complies with the rules or it does not.

V. Summary

As the Commission stated in the Company's previous IRP case, "[t]he IRP rules require investor-owned utilities, such as Ameren Missouri, to engage in a resource planning process that considers all options, including demand side efficiency and energy management measures, to provide safe, reliable, and efficient electric service to the public at reasonable rates, in a manner that serves the public interest."[73] The record in this case demonstrates that this is exactly what Ameren Missouri has done in its 2011 IRP filing. Consequently, the Commission should find that the Company's IRP filing (a) demonstrates compliance with the IRP rules; and (b) that the Company's resource acquisition strategy meets the requirements of the IRP rules.

Respectfully submitted,

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[73] Case No. EO-2007-0409, Final Order p. 1.

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Dated: February 21, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served on all parties of record via electronic mail (e-mail) on this 21st day of February, 2012.

/s/ Wendy K. Tatro

Wendy K. Tatro