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Kind/Rebuttal

Public Counsel

EO-2011-0271

**REBUTTAL TESTIMONY**

**OF**

**RYAN KIND**

Submitted on Behalf of  
the Office of the Public Counsel

**UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI**

Case No. EO-2011-0271

October 28, 2011

*DPC* Exhibit No. 48  
Date 12-16-11 Reporter JL  
File No. EO-2011-0271

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

In the Matter of Union Electric Company's )  
2011 Utility Resource Filing Pursuant to )  
4 CSR 240 – Chapter 22 )

**Case No. EO-2011-0271**

**AFFIDAVIT OF RYAN KIND**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am a Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached affidavit are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Ryan Kind

Subscribed and sworn to me this 28<sup>th</sup> day of October 2011.



**JERENE A. BUCKMAN**  
My Commission Expires  
August 23, 2013  
Cole County  
Commission #09754037

  
\_\_\_\_\_  
Jerene A. Buckman  
Notary Public

My commission expires August 23, 2013.

**REBUTTAL TESTIMONY**  
**OF**  
**RYAN KIND**  
**UNION ELECTRIC COMPANY**  
**CASE NO. EO-2011-0271**

**1. INTRODUCTION AND QUALIFICATIONS**

**Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

A. Ryan Kind, Chief Energy Economist, Office of the Public Counsel, P.O. Box 2230,  
Jefferson City, Missouri 65102.

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.**

A. I have a B.S.B.A. in Economics and a M.A. in Economics from the University of  
Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as  
a Teaching Assistant with the Department of Economics, and taught classes in  
Introductory Economics, and Money and Banking, in which I served as a Lab Instructor  
for Discussion Sections.

My previous work experience includes several years of employment with the Missouri  
Division of Transportation as a Financial Analyst. My responsibilities at the Division of  
Transportation included preparing transportation rate proposals and testimony for rate  
cases involving various segments of the trucking industry. I have been employed as an  
economist at the Office of the Public Counsel (Public Counsel or OPC) since 1991.

**Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

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1 A. Yes, prior to this case I submitted written testimony in numerous gas rate cases, several  
2 electric rate design cases and rate cases, as well as other miscellaneous gas, water,  
3 electric, and telephone cases.

4 Q. HAVE YOU PROVIDED COMMENTS OR TESTIMONY TO OTHER REGULATORY OR  
5 LEGISLATIVE BODIES ON THE SUBJECT OF UTILITY REGULATION AND  
6 RESTRUCTURING?

7 A. Yes, I have provided comments and testimony to the Federal Energy Regulatory  
8 Commission (FERC), the Missouri House of Representatives Utility Regulation  
9 Committee, the Missouri Senate's Commerce & Environment Committee and the  
10 Missouri Legislature's Joint Interim Committee on Telecommunications and Energy.

11 Q. HAVE YOU BEEN A MEMBER OF, OR PARTICIPANT IN, ANY WORK GROUPS,  
12 COMMITTEES, OR OTHER GROUPS THAT HAVE ADDRESSED ELECTRIC AND GAS UTILITY  
13 REGULATION AND POLICY ISSUES?

14 A. Yes. I am currently a member of the National Association of State Consumer Advocates  
15 (NASUCA) Electric Committee, and the Stakeholder Steering Committee (SSC) of the  
16 Eastern Interconnection Planning Collaborative (EIPC). I have served on the Missouri  
17 Department of Natural Resources Weatherization Policy Advisory Committee, as the  
18 public consumer group representative to the Midwest ISO's (MISO's) Advisory  
19 Committee and as the small customer representative on both the NERC Operating  
20 Committee and the NERC Standards Authorization Committee. During the early 1990s, I  
21 served as a Staff Liaison to the Energy and Transportation Task Force of the President's  
22 Council on Sustainable Development.  
23

1       **Q.     WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2       A.     On June 23, 2011 the OPC filed a *Review of Union Electric Company's Electric*  
3       *Resource Planning Compliance Filing*, Case No. EO-2011-0271 (OPC Review). That  
4       review identified several significant deficiencies with the Union Electric (UE or the  
5       Company) Integrated Resource Plan (IRP), and recommended that the Company correct  
6       for these deficiencies, conduct its analysis again, and then select a Preferred Resource  
7       Plan and Resource Acquisition Strategy based upon the revised planning analysis and  
8       using a credible plan selection process that complies with the IRP rule. That OPC review  
9       was accompanied by a technical report entitled, *Review of the Union Electric Company*  
10      *Integrated Resource Plan* (OPC Technical Report), authored by Mr. Woolf, Dr. Vitolo  
11      and myself. Tim Woolf and Thomas Vitolo of Synapse Energy Economics assisted  
12      Public Counsel in performing our review and writing the OPC Technical report. On  
13      August 22, 2011 UE filed a *Response to Comments of Parties* (Response), including  
14      responses to the issues raised by the OPC.

15      The purpose of my testimony is to rebut the UE Response. In my testimony I focus on  
16      those topics that I was primarily responsible for addressing in the OPC Technical Report,  
17      including: an examination of the plan selection process used by UE and the compliance  
18      of that process with the requirement in the IRP rule to use minimization of the present  
19      value of revenue requirements (PVRR) as the primary criteria for selecting the preferred  
20      resource plan.

21      **Q.     IS THE OFFICE OF THE PUBLIC COUNSEL SPONSORING OTHER WITNESSES IN THIS**  
22      **DOCKET?**

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1 A. Yes, Mr. Woolf and Dr. Vitolo of Synapse Energy Economics are sponsoring testimony  
2 on behalf of the OPC. Mr. Woolf, Dr. Vitolo and I have collaborated closely in preparing  
3 our testimonies.

4 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

5 A. My testimony is organized as follows:

- 6 1. Introduction and Qualifications.
- 7 2. Summary of Conclusions and Recommendations.
- 8 3. Failure to use PVRR as the primary plan selection criteria.
- 9 4. UE's provision of insufficient and inaccurate information to critical decision  
10 makers involved in selecting and approving the preferred resource plan.

11 **2. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

12 **Q. PLEASE SUMMARIZE YOUR PRIMARY CONCLUSIONS.**

13 A. UE's Response does not sufficiently address the deficiencies identified in the OPC  
14 Review and the OPC Technical Report. I confirm the OPC's original finding that the UE  
15 IRP is fundamentally flawed, does not meet the requirements of the MO IRP rules (4  
16 CSR 420-22), and does not provide the Company or the Commission with sufficient  
17 analysis and information to identify an appropriate Preferred Resource Plan or a  
18 reasonable Resource Acquisition Strategy.

19 **Q. PLEASE SUMMARIZE YOUR OVERALL RECOMMENDATIONS.**

20 A. I recommend that the Commission find that the UE IRP filing did not comply with the  
21 MO IRP rule. In addition, I recommend that the Commission find that the UE IRP  
22 contains so many significant flaws that it cannot be relied upon by the Company for

1 short-term or long-term resource planning purposes, nor can it be relied upon by the  
2 Commission for regulatory review of resource plans. Public Counsel recommends that  
3 the Commission require the Company to conduct its IRP analysis again with the  
4 modifications described in this testimony and in the testimony of the other OPC  
5 witnesses, Mr. Woolf and Dr. Vitolo.

6 **3. FAILURE TO USE PVRR AS PRIMARY PLAN SELECTION CRITERIA**

7 **Q. PLEASE SUMMARIZE THE OPC'S CONCERNS ABOUT THE COMPANY'S FAILURE TO**  
8 **USE MINIMIZATION OF PVRR AS THE PRIMARY PLAN SELECTION CRITERIA.**

9 A. The Commission's IRP rule that was effective at the time UE made its IRP filing in early  
10 2011 contains a requirement in 4 CSR 240-22.010 (2)(B) for the electric utility to use  
11 minimization of the present value of revenue requirements (PVRR) as the primary  
12 selection criterion in choosing the preferred resource plan. The Company's own analysis  
13 indicates that higher levels of efficiency savings in the Reasonably Achievable Potential  
14 (RAP) DSM portfolio can reduce electricity costs by \$1.5 to \$2.5 billion relative to the  
15 "Low Risk" DSM portfolio in the preferred resource plan chosen by the Company.  
16 Despite this analysis, UE chose the more costly alternative resource plan with the "Low  
17 Risk" DSM portfolio as its preferred resource plan. UE explained its preferred resource  
18 plan choice in the IRP filing by stating that the Low Risk Portfolio includes program  
19 spending and savings that are at "a level commensurate with the Company's growing  
20 concerns with the current DSM regulatory framework, especially lost revenues."<sup>1</sup> In other  
21 words, the Company's "growing concerns with the current DSM regulatory framework"  
22 were the primary plan selection criteria utilized by UE. This concern entered into UE's  
23 plan selection process through the use of what UE termed a "decision factor" that UE

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1 UE IRP, Chapter 7, page 2.

1           used to justify not choosing plans that minimized PVRR, even though UE never received  
2           a waiver from the Commission that would permit the use of "decision factors" as part of  
3           its preferred plan selection process.

4           The issue of the lost revenues associated with demand-side resources was already  
5           addressed by the Commission in a rulemaking docket (Case No. EX-2010-0368) and the  
6           rule promulgated by the Commission in that docket became effective shortly after UE  
7           made its IRP filing. UE's concerns about how lost revenues will be treated under the  
8           DSM regulatory framework in Missouri are premature since neither UE or any other  
9           electric utility has yet filed an application with the Commission under the MEEIA rule  
10          and learned from actual experience how the Commission will respond to DSM cost  
11          recovery proposals that include lost revenue recovery or DSM incentives (which can also  
12          mitigate the impact of lost revenues).

13          **Q.     PLEASE SUMMARIZE THE COMPANY'S RESPONSE TO THE ISSUE OF WHETHER IT USED**  
14          **MINIMIZATION OF PVRR AS THE PRIMARY PLAN SELECTION CRITERIA.**

15          A.     This same issue was raised by Staff, DNR, and NRDC as well as OPC, and the Company  
16          responds to this issue on pages 94 – 100 of its Response. UE's response on this issue  
17          raised a number of points in an effort to defend its plan selection process and the part that  
18          the PVRR plan selection criteria played in this process. These points include:

- 19               1. "PVRR minimization has the highest weight of any selection criteria, meaning  
20               that its weighting is of first importance which in turn means it was the 'primary  
21               criterion.'" (p. 94).
- 22               2. "Ameren Missouri has used minimization of PVRR as its primary selection  
23               criterion in choosing its preferred resource plan by placing the highest weighting  
24               of any performance measure on PVRR minimization." (p. 95)

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3. UE's assertion that using only 25% or 30% weights for the PVRR plan selection criteria is acceptable when you add the weights of the rate impact measure to the PVRR weight. (p. 95)
4. "It is also important to note that the role of the scorecards is not to make decisions but to provide one piece of information that supports decision making by Ameren Missouri's management. As such, it is important to avoid placing too much significance on the development and results of the scoring." (p. 98)
5. Attempting to defend its use of DSM rate recovery concerns as a decision factor that outweighs the importance of the PVRR plan selection criteria by stating "This is consistent with the direction from the Commission in Ameren Missouri's 2008 IRP, in which the Commission expressed concern with the selection of a preferred resource plan that required ratemaking treatment that had not yet been established." (p. 96)

**Q. DO YOU AGREE WITH THE COMPANY'S RESPONSE AND THE POINTS IT RAISED IN AN EFFORT TO DEFEND ITS PLAN SELECTION PROCESS AND THE PART THAT THE PVRR PLAN SELECTION CRITERIA PLAYED IN THIS PROCESS?**

**A. No.**

**Q. PLEASE EXPLAIN WHY YOU DISAGREE WITH UE'S ASSERTION THAT "PVRR MINIMIZATION HAS THE HIGHEST WEIGHT OF ANY SELECTION CRITERIA, MEANING THAT IT'S WEIGHTING IS OF FIRST IMPORTANCE WHICH IN TURN MEANS IT WAS THE 'PRIMARY CRITERION'".**

**A. First, I disagree because it is an incorrect interpretation of the requirement to use PVRR as their primary plan selection criteria to assume that, so long as minimization of PVRR is given a weight greater than the weight of any other section criteria means that the**

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1 utility has used PVRR as their primary plan selection criteria. Taken to its logical  
2 extreme, this interpretation would imply that a utility could choose 20 plan selection  
3 criteria and give a 6% weight to PVRR while giving slightly less than a 5% weight to  
4 each of the remaining 19 plan selection criteria. I do not believe such a plan selection  
5 process could be viewed as using PVRR as the primary plan selection criteria and  
6 complying with the requirement in the rule. In the second point raised by UE that is listed  
7 above, the Company confirms its view that all it needs to do is show that it has given  
8 more weight to PVRR than it gives to any other plan selection criteria in order to comply  
9 with the requirement to use PVRR as the primary plan selection criteria.

10 Second, as shown in the table at the bottom of page 20 in the OPC Technical Report, the  
11 actual weight (effective weight) given to PVRR in the screening process was only 7.3%,  
12 not the 25% weight that UE claims was used. Dr. Vitolo also addresses this effective  
13 weighting issue in his rebuttal testimony.

14 **Q. DO YOU AGREE WITH THE THIRD POINT LISTED ABOVE THAT USING ONLY 25% OR**  
15 **30% WEIGHTS FOR PVRR IS ACCEPTABLE WHEN YOU ADD THE WEIGHTS OF THE**  
16 **RATE IMPACT MEASURE TO THE PVRR WEIGHT?**

17 **A.** No. UE attempts to support this point on page 95 of its Response where the Company  
18 states "while PVRR is a measure of total cost, rate increases also measure the change in  
19 total cost over the planning horizon." Rate increases are not a reasonable proxy for the  
20 direct measurement of the "total cost over the planning horizon." This would only be the  
21 case for long range planning analysis that does not include demand-side resources. The  
22 Missouri IRP rule requires that both supply-side and demand-side resources be used in  
23 the long range planning analysis required by the rule and there is no direct  
24 correspondence between increases in total cost over the planning horizon and changes in  
25 average system rates (ASR) over the planning horizon when demand-side resources are

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1 included. If the sum of PVRR and ASR are used as a proxy for total cost over the  
2 planning horizon, this would introduce an additional bias against alternative resource  
3 plans containing high levels of DSM because those plans would generally have larger  
4 increases in ASR over time than supply-side only plans or plans with minimal amounts of  
5 DSM, even though the plans with high DSM may have a lower level of total costs over  
6 the planning horizon than low DSM plans. Also, as described below, the Commission has  
7 already given guidance on the inappropriateness of using ASR to meet the rule  
8 requirements for using PVRR as the primary plan selection criteria.

9 **Q. WHAT IS YOUR RESPONSE TO THE FOURTH POINT RAISED BY UE THAT IS LISTED**  
10 **ABOVE WHERE UE STATES "THE ROLE OF THE SCORECARDS IS NOT TO MAKE**  
11 **DECISIONS BUT TO PROVIDE ONE PIECE OF INFORMATION THAT SUPPORTS DECISION**  
12 **MAKING" AND "IT IS IMPORTANT TO AVOID PLACING TOO MUCH SIGNIFICANCE ON THE**  
13 **DEVELOPMENT AND RESULTS OF THE SCORING?"**

14 **A..** These statements essentially show the first three points raised by UE to be meaningless.  
15 If the scorecard scoring process just provides "one piece of information that supports  
16 decision making" and care should be taken not to place "too much significance on the  
17 development and results of the scoring", then why does UE rely solely on this scorecard  
18 process in its attempt to argue that it has complied with the requirement in the IRP rule to  
19 use minimization of PVRR as the primary selection criteria? UE further downplays the  
20 significance of the scorecards in the plan selection process when it states on page 98 of its  
21 Response that "It is also important to note that the role of the scorecards is not to make  
22 decisions but to provide one piece of information that supports decision making by  
23 Ameren Missouri's management." This statement also raises the question of why UE has  
24 relied solely on this scorecard process in its attempt to argue that it has complied with the  
25 requirement in the IRP rule to use minimization of PVRR as the primary selection

1 criteria. The scorecard process can't simultaneously be (1) just one more piece on  
2 information considered by management to support its decision-making process and (2)  
3 proof that UE has used minimization of PVRR as its primary plan selection criteria.

4 **Q. WHAT IS YOUR RESPONSE TO THE FIFTH POINT RAISED BY UE THAT IS LISTED ABOVE**  
5 **WHERE UE STATES THE USE OF THE DSM COST RECOVERY DECISION FACTOR IS "IS**  
6 **CONSISTENT WITH THE DIRECTION FROM THE COMMISSION IN AMEREN MISSOURI'S**  
7 **2008 IRP, IN WHICH THE COMMISSION EXPRESSED CONCERN WITH THE SELECTION**  
8 **OF A PREFERRED RESOURCE PLAN THAT REQUIRED RATEMAKING TREATMENT THAT**  
9 **HAD NOT YET BEEN ESTABLISHED."?**

10 **A.** My response is that no such concern was expressed by the Commission in its order in  
11 UE's 2008 IRP. UE's response to OPC DR No. 2033 acknowledged that no such  
12 concern was expressed by the Commission in that order. UE's DR response indicates that  
13 the Company was referring to a part of the order that stated "They are also concerned  
14 Ameren UE has not sufficiently analyzed all financing alternatives in its rush to have  
15 Missouri's anti-CWIP statute overturned by the legislature." UE also attempted to draw  
16 an analogy between CWIP ratemaking and DSM cost recovery on page 99 of its  
17 Response where it states:

18 NRDC indicates that the "DSM rules" (i.e. the Commission's MEEIA  
19 rules) encourage utilities to propose lost revenue recovery mechanisms.  
20 Even if such mechanisms were eventually deemed by the Commission to  
21 be desirable, Ameren Missouri cannot presume approval of such  
22 mechanisms in assessing the viability of plans any more than it can  
23 presume the allowance of CWIP in ratebase to support supply side  
24 investments.

25 Making such an analogy between CWIP cost recovery and DSM cost recovery is not  
26 credible. In the case of DSM cost recovery, the MEEIA legislation was passed and  
27 became law, followed by the Commission's promulgation of a rule to implement the new  
28 DSM cost recovery authorized by Missouri statute. In the case of CWIP, Ameren has

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1 repeatedly tried to get the legislature to pass legislation permitting CWIP and has  
2 repeatedly failed to accomplish this, even when the CWIP legislation was scaled back so  
3 it would only apply to the costs associated with a NRC Early Site Permit. It makes no  
4 sense to compare cost recovery difficulties for DSM with the cost recovery difficulties of  
5 building a multi-billion dollar nuclear plant. Enhanced cost recovery has already been  
6 authorized (and procedures already put in place with a new rule) for DSM costs while  
7 enhanced cost recovery through CWIP for building a multi-billion dollar nuclear plant  
8 has repeatedly been denied by the Missouri Legislature.

9 **Q. PLEASE SUMMARIZE YOUR ASSESSMENT OF UE'S USE OF PVRR AS THE PRIMARY**  
10 **PLAN SELECTION CRITERIA?**

11 A. Despite UE's arguments to the contrary, it has not used the minimization of PVRR as the  
12 primary plan selection criteria. In order to comply with the rule, UE would have needed  
13 to give at least 50% weighting to this plan selection criteria. As OPC witness Dr. Vitolo  
14 has demonstrated, UE did not even weight PVRR at the lower than 50% nominal  
15 weighting level that was claimed because the effective weight of approximately 7% given  
16 to PVRR in the plan scoring selection process was much less than the nominal weight. In  
17 addition, UE used the DSM cost recovery "decision factor" to essentially over-rule the  
18 selection of plans containing the RAP level of DSM, even though these plans performed  
19 best on the primary plan selection criteria of minimizing PVRR. Using the DSM cost  
20 recovery "decision factor" to reject the plan that would have otherwise been selected  
21 means that this "decision factor" was elevated to a level of importance above the PVRR  
22 plan selection criteria and effectively became the primary plan selection criteria.

1       **Q.     WHY DOES PUBLIC COUNSEL BELIEVE IT IS IMPORTANT FOR THE COMMISSION TO**  
2       **FIND THAT THE PLAN SELECTION PROCESS USED BY UE IS NOT IN COMPLIANCE WITH**  
3       **SECTION 4 CSR 240-22.010 (2)(B) OF THE COMMISSION'S IRP RULES?**

4       **A.     There are several reasons why this is important. These reasons include:**

- 5               1. The IRP rules that were effective at the time of UE's IRP filing and which are  
6               applicable to this filing contain a requirement in section 4 CSR 240-22.080 (13)  
7               stating that **"The commission will issue an order which contains findings that**  
8               the electric utility's filing pursuant to this rule either does or does not  
9               demonstrate compliance with the requirements of this chapter, and **that the**  
10              **utility's resource acquisition strategy either does or does not meet the**  
11              **requirements stated in 4 CSR 240-22.010(2)(A)-(C)"** (Emphasis added) As  
12              noted below, the Commission made a finding in Case No. EO-94-360 that  
13              KCPL's IRP filing did "not demonstrate compliance with the requirements of 4  
14              CSR 240-22.010 (2)(A)-(C)" because KCPL did not use minimization of PVRR  
15              as the primary plan selection criteria.
- 16              2. UE's decision to allow its concern over DSM cost recovery to outweigh the  
17              primary plan section criteria specified in 4 CSR 240-22.010 (2)(B) through the  
18              use of a DSM cost recovery "decision factor" is not consistent with the plan  
19              selection requirements of the rule and UE has not sought a waiver from the rule's  
20              plan selection framework that would permit the Company to use "decision  
21              factors" as the determining factor in selecting its preferred resource plan.
- 22              3. Section 4 CSR 240-22.010 (1) of the Commission's rules defines the  
23              "fundamental objective of the resource planning process" by stating "the  
24              fundamental objective of the resource planning process at electric utilities shall  
25              be to provide the public with energy services that are safe, reliable and efficient,  
26              at just and reasonable rates, in a manner that serves the public interest." Public

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1 Counsel believes that the Commission has a crucial role to play in this case of  
2 ensuring the public is provided with energy services in a manner that serves the  
3 public interest. The Company has selected a preferred plan containing a low  
4 level of DSM resources in order to further the interests of Ameren's  
5 shareholders. In order to select this plan, UE ignored the requirement in the rule  
6 for it to use minimization of PVRR as the primary plan selection criteria. The  
7 Commission needs to fulfill its duty to protect the public interest by ordering UE  
8 to conduct its preferred plan selection process consistent with the requirements of  
9 the rule. Public Counsel cites a number of other deficiencies in UE's filing and  
10 recommends that the Commission order UE to perform new IRP analysis  
11 correcting these deficiencies and then select a preferred plan and resource  
12 acquisition strategy in the manner required by the IRP rule.

- 13 4. In making its decision in this case, the Commission should be aware of the fact  
14 that while UE often portrays planning analysis and the resulting plan as just  
15 being a snapshot in time of what future resource acquisitions should occur over  
16 the next few years and the rest of the planning horizon, UE actually takes these  
17 preferred plan selections very seriously and attempts to either carry out the  
18 resource acquisitions in its preferred plan or notify the Commission that there has  
19 been a change in its preferred plan.

20 **Q. IN THE FOURTH POINT THAT YOU LISTED ABOVE, YOU STATE THAT "UE ACTUALLY**  
21 **TAKES THESE PREFERRED PLAN SELECTIONS VERY SERIOUSLY AND ATTEMPTS**  
22 **TO...CARRY OUT THE RESOURCE ACQUISITIONS IN ITS PREFERRED PLAN." CAN YOU**  
23 **PROVIDE SOME SUPPORT FOR THIS STATEMENT?**

24 **A.** Yes. The preferred plan that UE selected as part of its 2008 IRP filing contained some  
25 DSM resource acquisition goals that were moderately aggressive for a utility that is

1 relatively new and inexperienced at offering full-scale energy efficiency programs to its  
2 customers. UE had some initial problems with its DSM implementation contractors for  
3 its residential programs and got off to a slow start on executing its three year DSM  
4 implementation plan. (The three-year DSM implementation plan covered the first three  
5 years of the 20 year preferred resource plan that UE filed in its 2008 IRP filing.) Despite  
6 this slow start, UE made substantial efforts to catch up in the second and third years of  
7 the three year implementation plan time period so that it could meet the energy efficiency  
8 resource acquisition savings goals (MWh reductions) specified in the first three years of  
9 its preferred resource plan.

10 The testimony of UE President and CEO Warner Baxter on April 26, 2011 at the rate  
11 case hearing in Case No. ER-2011-0028 also demonstrates the importance that UE places  
12 on executing its resource acquisitions in a manner consistent with the preferred resource  
13 plan that it has selected. At that hearing, Mr. Baxter made the following statements (See  
14 Transcript Volume 16, p. 111 line 4 – p. 113, line 2) in response to cross examination  
15 from Staff attorney Kevin Thompson:

16 Q. It's the calendar year. Okay. So for calendar year 2011, do you know  
17 has Ameren Missouri budgeted an amount of capital expenditure for  
18 energy efficiency?

19 A. Yes.

20 Q. And what is that amount?

21 A. It is my understanding that amount approximates \$33 million.

22 Q. Okay. If you know, is the budget for calendar year 2012 in existence?

23 A. Yes.

24 Q. Okay. And if you know, what is the amount of energy efficiency  
25 expenditure budgeted for 2012?

26 A. I believe what was budgeted for 2012 was an amount -- was \$20  
27 million.

28 Q. \$20 million?

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1 A. Yes.

2 Q. So you would agree with me that's about \$13 million less than the  
3 amount you said was budgeted for this year?

4 A. Yes.

5 Q. Okay. If you know, what's the explanation for that decrease?

6 A. I think there are a couple reasons for that. Number 1 is that **the \$33**  
7 **million that we're spending this year is consistent with the amount of**  
8 **expenditures that we think are necessary to meet our commitment**  
9 **that we made under the integrated resource plan to achieve those**  
10 **savings.**

11 Having said that, I'll say that the \$33 million number te [sic] most  
12 important thing we're really focused on is achieving the savings. It isn't  
13 so much the \$33 million that is the right thing to do. We're focused on  
14 achieving the savings.

15 Frankly, it's in our customers' best interest if we achieve the savings, we  
16 can do it in a manner that's less than \$33 million.

17 But prospectively, did we chose [sic] to lower that amount; the simple  
18 answer is yes. And it is lower. But if you look at over the last three  
19 years, what we've spent on energy efficiency and you know, \$20 million  
20 is by and large consistent. Maybe it's a little bit less, but when you look  
21 at the last three years our average has probably been, you know, in the  
22 mid-\$70 million.

23 **We've ramped up here in this last year to make sure that we achieve**  
24 **our commitment before.** So I think it's in part that is that we're still  
25 trying to make tens of millions of dollars of investments in energy  
26 efficiency prospectively. (Emphasis added)

27 It is clear from Mr. Baxter's statements quoted above that UE takes seriously the DSM  
28 resource acquisition commitments contained in the preferred plan of its most recent IRP  
29 filing. Consequently, the Commission should take this into account when making its  
30 decisions about the plan selection process deficiency and other deficiencies cited by  
31 Public Counsel in this case. The seriousness with which UE takes these preferred plan  
32 commitments are clear in statements made in his testimony quoted above such as:

33 the \$33 million that we're spending this year is consistent with the  
34 amount of expenditures that we think are necessary to meet our  
35 commitment that we made under the integrated resource plan to achieve  
36 those savings.

1       **Q.     IS THERE ANY ADDITIONAL SUPPORT FOR YOUR STATEMENT THAT "UE ACTUALLY**  
2       **TAKES THESE PREFERRED PLAN SELECTIONS VERY SERIOUSLY AND ATTEMPTS**  
3       **TO...CARRY OUT THE RESOURCE ACQUISITIONS IN ITS PREFERRED PLAN"?**

4       **A.**     Yes. UE filed a notice of change in its preferred plan in this case on October 25, 2011. In  
5       this filing, UE states "the Company has decided to reduce its level of Demand-Side  
6       Management (DSM) investment to \$10 million for calendar year 2012 to balance the  
7       need for continuity with the need to ensure opportunities for fair returns for investors."  
8       However, UE's statement that it will spend \$10 million in 2012 appears to reflect an  
9       annualized level of spending based upon a much more limited actual commitment to  
10      spend just \$5 million through June 30, 2012. UE appears to have changed its preferred  
11      plan from one which includes its "low risk" level of DSM investments at approximately  
12      \$20 million per year to what might be characterized as an ultra-low risk level of DSM  
13      investment (from a shareholder only perspective) in order to decrease the amount of  
14      DSM resource acquisitions that it will be committed to make over the remainder of the  
15      three year implementation period for its 2011 IRP.

16      Public Counsel views this lower level of commitment to acquire DSM resources to be  
17      even more inconsistent with the public interest objective of the IRP planning process than  
18      the original preferred resource plan contained in UE's 2011 IRP filing. OPC encourages  
19      the Commission to make a timely and strong decision in this case that will help move  
20      UE's DSM resource acquisition activities back towards an aggressive level of DSM  
21      resource acquisition in order to mitigate the damage that is resulting from UE's decision  
22      to drastically reduce its energy efficiency programs. The drastic reduction in UE's  
23      energy efficiency programs has not only resulted in energy efficiency services not being  
24      available to UE customers (to help them cope with the numerous rate increases that have  
25      been approved for UE over the last few years) but has also harmed the company's ability  
26      to implement successful future programs though (1) the damage done to the infrastructure

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1 needed to implement future programs, (2) the damage to relationships with  
2 implementation contractors and trade allies (e.g. HVAC contractors, lighting contractors,  
3 energy auditors, retail outlets for energy efficiency products, and commercial and  
4 residential energy auditors), and (3) the loss of momentum that these programs had  
5 achieved in the market place and with customers.

6 **Q. HAS COMPLIANCE WITH THE IRP RULE REQUIREMENT TO USE PVRR AS THE PRIMARY**  
7 **PLAN SELECTION CRITERIA BEEN PREVIOUSLY ADDRESSED BY THE COMMISSION IN**  
8 **OTHER IRP FILINGS?**

9 A. Yes, as I noted in the above testimony, the Commission addressed this issue in its "Order  
10 Concerning Compliance" in Case No. EO-94-360. In that case, the Commission found  
11 that KCPL's IRP filing did "not demonstrate compliance with the requirements of 4 CSR  
12 240-22.010 (2)(A)-(C), et seq." The Commission also stated in that order that "the filings  
13 in this docket demonstrate that KCPL used minimization of average system rates (ASR)  
14 as its sole selection criterion in connection with DSM planning" and "the rule states in no  
15 uncertain terms that the utility shall use minimization of the present worth of long run  
16 utility costs as the primary selection criteria in choosing the preferred plan."

17 **Q. DID UE PROPOSE CHANGING THE REQUIREMENT TO USE PVRR AS THE PRIMARY**  
18 **PLAN SELECTION CRITERIA IN THE RECENT COMMISSION RULEMAKING IN CASE NO.**  
19 **EX-2010-0254 TO REVISE THE IRP RULES?**

20 A. Yes. In that rulemaking case, UE filed written comments (Comments of Ameren  
21 Missouri) on January 3, 2011. The changes to the IRP rule that were proposed by MEDA  
22 and supported by UE were attached to UE's written comments. The "MEDA" proposed  
23 IRP rule had new language changing the manner that PVRR would be considered in the  
24 plan selection process in section 4 CSR 240-22.010(B) which stated "Use minimization

1 of the present value of long-run utility costs as a selection criteria in choosing the  
2 preferred resource plan.” In this new proposed language that UE supported, the word  
3 “primary” was deleted from the existing IRP rule and replaced with “a”. UE’s use of  
4 PVRR as just one of many plan selection criteria as it has done in its 2011 IRP filing  
5 would not violate the PVRR plan selection criteria language that the Company had  
6 supported in the recent IRP rulemaking, but this does violate the IRP rule which is  
7 applicable to UE’s 2011 IRP filing.

8 **Q. DID THE COMMISSION RETAIN THE REQUIREMENT FOR UTILITIES TO USE MINIMIZATION**  
9 **OF PVRR AS THE PRIMARY PLAN SELECTION CRITERIA IN ITS REVISED IRP RULES**  
10 **THAT RESULTED FROM THE RULEMAKING IN CASE NO. EX-2010-0254?**

11 A. Yes. The Commission did not adopt UE’s recommendation to drop the word “primary”  
12 from the provision requiring the use of PVRR as the main plan selection criteria.

13 **4. UE’S PROVISION OF INSUFFICIENT AND MISLEADING**  
14 **INFORMATION TO DECISION MAKERS INVOLVED IN SELECTING AND**  
15 **APPROVING THE PREFERRED RESOURCE PLAN**

16 **Q. PLEASE SUMMARIZE THE OPC’S CONCERNS ABOUT THE COMPANY’S FAILURE TO**  
17 **PRESENT SUFFICIENT AND ACCURATE INFORMATION TO THE DECISION MAKERS**  
18 **INVOLVED IN SELECTING AND APPROVING UE’S PREFERRED RESOURCE PLAN AND**  
19 **RESOURCE ACQUISITION STRATEGY?**

20 A. The Company demonstrated a clear bias against energy efficiency in its presentations  
21 given to the Union Electric Board of Directors and the Ameren Board of Directors (See  
22 Attachments A and B to the OPC Technical Report.) In presentations to both of these  
23 boards, the Company refers to the Low Risk Portfolio of energy efficiency programs as  
24 the “Lowest Cost Resource Plan,” when its own analyses indicate that the RAP Portfolio

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1 of energy efficiency programs clearly results in lower costs when compared correctly  
2 with the Low Risk Portfolio. In addition, in both of those presentations the Company  
3 claims that the RAP Portfolio has a "moderate disadvantage" in terms of the cost criteria  
4 relative to the Low Risk Portfolio, when all of its analyses indicate that the opposite is  
5 true.

6 **Q. PLEASE SUMMARIZE THE COMPANY'S RESPONSE TO THE ISSUE OF WHETHER IT**  
7 **PROVIDED INSUFFICIENT AND INACCURATE INFORMATION TO THE DECISION MAKERS**  
8 **INVOLVED IN SELECTING AND APPROVING UE'S PREFERRED RESOURCE PLAN AND**  
9 **RESOURCE ACQUISITION STRATEGY.**

10 **A.** This issue was raised by both the Staff and Public Counsel and the Company's response  
11 to this issue can be found on pages 110 – 112 of UE's Response. Surprisingly, UE  
12 attempts, in part, to defend the limited and misleading information provided to both the  
13 UE Board of Directors and the Ameren Board of Directors by stating that it was the  
14 "Ameren Missouri senior management...who made the final decisions on the resource  
15 acquisition strategy." According to UE's Response, after the final decisions were made  
16 by UE's senior management, these decisions were just presented to the UE Board of  
17 Directors and the Ameren Board of Directors "for review." In its Response, UE also  
18 attempts to defend the limited and misleading content in the documents provided to the  
19 UE Board of Directors by stating that "most members of the Ameren Missouri Board  
20 were present at meetings of Ameren Missouri's Senior Leadership Team in which all  
21 candidate resource plans were discussed and final selection of the preferred resource plan  
22 was made."

23 UE's Response also stated that "There seems to be a misperception that the Ameren  
24 Missouri Board selected the preferred resource plan when in fact it was the Ameren  
25 Missouri Senior Leadership Team who selected the preferred resource plan." This part of

1           UE's Response raises additional questions about UE's plan selection process such as why  
2           UE's filing contains resource acquisition strategy approval documentation for the UE  
3           Board of Directors when it was UE's senior management that actually selected the plan  
4           and evaluated the trade-off between the various plan selection requirements and  
5           considerations.

6           **Q.     DOES UE'S RESPONSE CONTAIN ANY STATEMENTS THAT ATTEMPT TO EXPLAIN THE**  
7           **VERY LIMITED INFORMATION PROVIDED TO THE UE BOARD OF DIRECTORS THAT**  
8           **MADE THE FINAL APPROVAL OF UE'S PREFERRED PLAN AND RESOURCE**  
9           **ACQUISITION STRATEGY, ACCORDING TO THE IRP FILING?**

10          A.     Yes. On page 108 of UE's Response, the Company asserts that "It also misses the fact  
11           that most members of the Ameren Missouri Board were present at meetings of Ameren  
12           Missouri's Senior Leadership Team in which all candidate resource plans were discussed  
13           and final selection of the preferred resource plan was made." Public Counsel asked OPC  
14           DR No. 2034 to discover the evidence, if any, that UE has relied upon in this assertion.  
15           In its response to this DR (see Attachment A), the Company was unable to provide  
16           information that supported this assertion. It should also be noted that this DR response  
17           did not fully answer the question asked in the DR and Public Counsel intends to follow  
18           up on this inadequate response and attempt to obtain an answer that is fully responsive to  
19           the questions asked in this DR since UE neither identified members who were present at  
20           each of the reference meetings or provided a statement that it was unable to provide this  
21           information.

22          **Q.     DID UE'S RESPONSE ADDRESS PUBLIC COUNSEL'S FINDINGS THAT THE**  
23           **PRESENTATIONS TO BOTH THE UE BOARD OF DIRECTORS AND THE AMEREN BOARD**  
24           **OF DIRECTORS CONTAINED INACCURATE INFORMATION WHEN STATING THE RAP**

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1           **PORTFOLIO HAS A "MODERATE DISADVANTAGE" IN TERMS OF THE COST CRITERIA**  
2           **RELATIVE TO THE LOW RISK PORTFOLIO?**

3           A.    No. UE's response does not even attempt to explain or justify why the UE Board of  
4           Directors or the Ameren Board of Directors received documents with this inaccurate  
5           information.

6           **Q.    HOW SHOULD THE COMMISSION ADDRESS UE'S FAILURE TO PROVIDE SUFFICIENT**  
7           **AND ACCURATE INFORMATION TO THE DECISION MAKERS INVOLVED IN SELECTING**  
8           **AND APPROVING UE'S PREFERRED RESOURCE PLAN AND RESOURCE ACQUISITION**  
9           **STRATEGY?**

10          A.    Public Counsel recommends that the Commission identify this failure as a contributing  
11          factor in making a finding that UE's IRP filing does not demonstrate compliance with the  
12          requirements of 4 CSR 240-22.010 (2)(A)-(C) .

13          **Q.    DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

14          A.    Yes.

**Ameren Missouri**  
**Response to OPC Data Request**  
**MPSC Case No. EO-2011-0271**  
**Union Electric Company d/b/a Ameren Missouri's 2011 Utility Resource Filing**  
**pursuant to 4 CSR 240 - Chapter 22**

Data Request No.: OPC 2034 – Ryan Kind

On page 108 in Section 11.6 of UE's 8/22/11 response, UE refers to "the the fact that most members of the Ameren Missouri Board were present at meetings of Ameren Missouri's Senior Leadership Team in which all candidate resource plans were discussed and final selection of the preferred resource plan was made." Please specify each of the dates of all of the "meetings of Ameren Missouri's Senior Leadership Team in which all candidate resource plans were discussed and final selection of the preferred resource plan was made." For each meeting date that is specified, identify all of the individuals who are members Ameren Missouri's Senior Leadership Team that were present at the meeting. Also, for each meeting date that is specified, identify all of the individuals who are members Ameren Missouri Board that were present at the meeting. If UE is not able to separately identify each member of the Ameren Missouri Senior Leadership Team and each member of the Ameren Missouri Board who were present at each of the specified meetings, please provide a statement to that effect.

**RESPONSE**

**Prepared By: Matt Michels**  
**Title: Managing Supervisor Resource Planning**  
**Date: October 24, 2011**

The Ameren Missouri Senior Leadership Team met on the following dates to review all candidate resource plans and/or select the preferred resource plan:

October 25, 2010  
November 8, 2010  
November 15, 2010

For each meeting, materials were provided in advance to all of the following people

Warner Baxter – Ameren Missouri Senior Leadership Team / Ameren Missouri Board of Directors  
Lynn Barnes – Ameren Missouri Senior Leadership Team  
Mark Birk – Ameren Missouri Senior Leadership Team  
Adam Heflin – Ameren Missouri Senior Leadership Team / Ameren Missouri Board of Directors  
Richard Mark – Ameren Missouri Senior Leadership Team / Ameren Missouri Board of Directors

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Warren Wood – Ameren Missouri Senior Leadership Team  
Dan Cole – Ameren Missouri Board of Directors  
Marty Lyons – Ameren Missouri Board of Directors

All those listed above attended one or more of the meetings listed above, either in person or by phone.