

Exhibit No.:

Issue(s):

Witness/Type of Exhibit:

Sponsoring Party:

Case No.:

IRP Rule Compliance

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

**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

[illegible]

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 28th 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?

Rebuttal Testimony of
Ryan Kind

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?**

Rebuttal Testimony of
Ryan Kind

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."¹ 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

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)

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

Rebuttal Testimony of
Ryan Kind

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

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

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

Q. WHAT IS YOUR RESPONSE TO THE FIFTH POINT RAISED BY UE THAT IS LISTED ABOVE WHERE UE STATES THE USE OF THE DSM COST RECOVERY DECISION FACTOR IS "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."?

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

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

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

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

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

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

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

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

Rebuttal Testimony of
Ryan Kind

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?

Rebuttal Testimony of
Ryan Kind

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

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

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

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

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

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

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

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

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

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

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

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

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**

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

Kind Rebuttal
Attachment A
Page 1 of 2

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.