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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. ER-2010-0036

REBUTTAL TESTIMONY

OF

STEPHEN M. KIDWELL

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a AmerenUE**

St. Louis, Missouri
February 11, 2010

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1 **Q. Please summarize your rebuttal testimony.**

2 **A. My rebuttal testimony discusses AmerenUE's incentives and disincentives**
3 for designing and implementing energy efficiency programs for its customers, apart from
4 any state or federal mandates. I then discuss key insights from AmerenUE's new study
5 of energy efficiency and demand response potential, which has recently been completed
6 and contains information and recommendations that are specific to AmerenUE's
7 customers and service area. The report describes in detail both the great potential and the
8 great challenges inherent in attempting to convince customers to adopt more energy
9 efficient lifestyles.

10 My testimony then turns to Senate Bill 376, or the Missouri Energy
11 Efficiency Investment Act (MEEIA), which was enacted last year to address the
12 disincentives which may inhibit utility investment in energy efficiency. I discuss the
13 clear intent of the bill, as captured in press releases and other public statements at the
14 time. I discuss Staff's legal opinion of MEEIA and show how this position contradicts
15 the clear intent of the Legislature and Governor in enacting MEEIA. Unfortunately
16 Staff's position adds greatly to the disincentives to energy efficiency investment faced by
17 Missouri utilities and puts funding for current and future AmerenUE programs in serious
18 jeopardy.

19 My testimony then turns to more detailed rebuttal of other witnesses.
20 First, I address the concerns expressed by Staff witness John Rogers about AmerenUE's
21 Lighting and Appliance Program. My testimony establishes the continuing value of
22 residential lighting programs based on both national studies and data from our own
23 service area. My testimony also demonstrates that AmerenUE's "market transformation"

1 approach is well accepted across the country and that our evaluation protocol for the
2 program is at the leading edge of current practice. Finally, I refute Mr. Rogers' claim
3 that the program is somehow especially risky since it is being implemented in an area that
4 is less than an entire state.

5 I also take up Staff witness Adam McKinnie's implication that AmerenUE
6 is somehow deficient in its progress in rolling out energy efficiency programs. In fact,
7 delays stem primarily from efforts to negotiate strong contracts and roll out high quality
8 programs.

9 My testimony then turns to energy efficiency cost recovery. I describe
10 how AmerenUE interprets the policy objectives and specific language of MEEIA and the
11 model we have developed to support our policy analysis. This model and its results are
12 discussed in more detail in the rebuttal testimony of AmerenUE witness Matt Michels. I
13 use results from this model to expand and add additional detail to the proposal contained
14 in my direct testimony and to evaluate both Staff's and MIEC's proposals. Staff's
15 proposal, which continues the current cost recovery mechanism until the Commission
16 establishes policies and rules to implement MEEIA, does not provide for timely cost
17 recovery of energy efficiency expenditures and may even add additional delay. Let me
18 be clear - if the Commission follows Staff's proposal, it will send a chilling message to
19 the investor-owned utilities of Missouri. To my knowledge, the current Missouri
20 mechanism is unprecedented in the lag it imposes on recovery of utility investments in
21 energy efficiency. The Company did hold discussions on this issue, as my direct
22 testimony indicated we would do. Staff's Report acknowledges the four settlement
23 meetings which were held. These discussions were facilitated by the American Council

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1 for an Energy Efficient Economy (ACEEE) and the Regulatory Assistance Project
2 (RAP), with financial support from the Robertson Foundation, rather than by AmerenUE.
3 If settlement of this issue does not occur, then it is time for the Commission to act
4 decisively and in this case, to support utility investments in energy efficiency. To do
5 otherwise will cause considerable rethinking of AmerenUE's current short-term energy
6 efficiency investment plans.

7 I then turn to a discussion of MIEC witness Maurice Brubaker's cost
8 recovery proposal. Mr. Brubaker's testimony ignores the fact that the utility does not
9 acquire physical assets when it invests in energy efficiency programs; to the contrary, the
10 utility engages in a variety of marketing strategies and incurs expenses with the goal of
11 altering our customers' purchases and consumption behavior. This obvious fact is why,
12 to my knowledge, virtually every state allows utilities to expense energy efficiency
13 program costs.

14 Next, I address MEG witness Billie Sue LaConte's interpretation of
15 MEEIA and specifically of the opt out provision. As I explain, Ms. LaConte's
16 interpretation does not consider all relevant factors and this issue should be left to the
17 docket examining rate design issues and the rulemaking required by statute.

18 Finally, I discuss the appropriate level of rate case expense and the issue
19 of whether EEI dues are appropriate to be recovered in the Company's revenue
20 requirement.

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II. ENERGY EFFICIENCY PROGRAM COST RECOVERY

Q. Is it in AmerenUE's interest to develop and implement energy efficiency programs for its customers?

A. Yes and no. On the positive side, we believe that the right kinds of energy efficiency programs, with the right marketing and promotional support, will increase customer satisfaction. We pay very close attention to the satisfaction of our customers, measuring it in 6 different surveys.¹ These surveys reveal which aspects of our products, services or brand image will return the greatest impact on customer satisfaction. In addition, many AmerenUE employees have incentive compensation tied to customer satisfaction, so in this sense customer energy efficiency programs are in our self-interest.

On the negative side, successful energy efficiency programs erode AmerenUE's revenue and earnings between rate cases and, under Missouri's current regulatory treatment, create huge regulatory asset balances as spending increases, as I discussed in my direct testimony.² These facts are significant disincentives to the utility that act to discourage its pursuit of energy efficiency.

Q. Are there any other strategic reasons why it might be beneficial, both to customers and shareholders, for AmerenUE to offer customer energy efficiency and demand response programs?

A. Yes, there are at least two. First, our customers and shareholders face large risks from carbon regulation, due to the fact that most of our generation is coal-

¹ These include: 1) The Customer Contact Index (CCI), which surveys 300 customers every month regarding their contact center experience; 2) The Field Operations Customer Survey (FOCUS), which surveys 500 customers each month concerning satisfaction with five types of customer service; 3) The Tree Trimming Survey, which surveys all property affected customers (approx. 1200 customers annually); 4) A

1 fired. Energy efficiency programs have potential value to everyone as a way to mitigate
2 these risks. Also, pursuing energy efficiency and demand response now might delay the
3 need for future additional generating capacity on our system. It's important that we
4 understand energy efficiency's potential, so that we can reduce the cost and risk of
5 meeting future demand for energy as much as possible.

6 **Q. What studies has AmerenUE performed to assess the potential of**
7 **energy efficiency and demand response programs on your system?**

8 A. We have recently completed a comprehensive study of the potential
9 impacts of energy efficiency and demand response, using information gained from
10 surveying our own customers. To my knowledge this is the most comprehensive study of
11 its kind ever performed in Missouri and one of the most advanced efforts of its kind in
12 the nation.

13 I have attached the executive summary of the report to my testimony as
14 Schedule SMK-ER2. Among the study's most important findings are these:

15 1. Between now and 2030, there is a realistic potential to offset 73% of
16 anticipated load growth with energy efficiency and demand response. By
17 "realistic" I mean programs that are economically feasible and attractive to
18 customers. If we could increase spending to levels to reach the maximum
19 achievable potential identified in the study, the offset would grow to 110%;
20 in other words, the demand for electricity would remain flat, and perhaps
21 slightly decline from today's level, over the next 20 years. This is after

survey of overall customer satisfaction, which polls 900 customers every quarter; 5) The JD Power Residential Electric Survey; and 6) The JD Power Business Electric Survey.

² Kidwell Direct, pp 13-16.

1 taking into account anticipated increases in federal energy efficiency
2 standards and other sources of “naturally occurring” efficiency.

3 2. In order to achieve the realistic potential level, annual spending on energy
4 efficiency and demand response would need to increase from approximately
5 \$30 million annually today to around \$100 million per year in 2015. This
6 would be roughly 5% of annual revenues, which is in line with what the most
7 aggressive utilities spend today. In order to reach maximum potential,
8 annual spending would need to be at about twice this level, or \$200+ million
9 per year by 2015.

10 3. Our customers are more resistant to energy efficiency and demand response
11 programs than customers in the West and Northeast. This is likely due to a
12 combination of our low electricity rates and the fact that a large utility-
13 sponsored energy efficiency program is a new idea in our service area that
14 will take time to gain acceptance. Projected take rates for our programs are
15 in the range of 20-30%, compared to 30-50% in other areas of the country.
16 This means that at least in the beginning, it will be much more challenging
17 (and expensive) to get our customers to engage and participate in energy
18 efficiency and demand response programs.

19 It is clear from our research that there is great potential for energy
20 efficiency and demand response programs to contribute to the Missouri economy,
21 creating jobs and helping us all meet the challenges of climate change. It is also clear
22 that success is not certain; it will be difficult and expensive to achieve the potential,
23 though less expensive than the alternative (i.e. continued or increasing reliance on coal

1 and natural gas). That's why it is important for Missouri to get the policy right –
2 incentives must be properly aligned or we have no hope of achieving the benefits that
3 more energy efficiency and demand response can bring.

4 **Q. What role does MEEIA play in getting the policy right with respect to**
5 **utility-sponsored energy efficiency?**

6 A. The new law signed by Governor Nixon last summer establishes as state
7 policy that utilities should be able to earn returns from energy efficiency and demand
8 response investments equal to what they have historically earned from building power
9 plants. As was stated in the Governor's press release at the time of the bill's signing:

10 *Senate Bill 376 sets a goal for Missouri's investor-owned electric utilities*
11 *to achieve all cost-effective savings possible from energy efficiency*
12 *programs. It provides the Public Service Commission with the ability to*
13 *encourage cost-effective energy efficiency by making utility investments*
14 *in energy efficiency programs for their customers at least as profitable*
15 *as building new power plants or making capital investments.*³
16

17 If the Commission recognizes and chooses to exercise this ability, it will
18 align utility business incentives with the aggressive pursuit of energy efficiency.

19 **Q. Does the Commission Staff accept the idea of energy efficiency**
20 **investments being as profitable to the utility as power plants?**

21 A. I believe that Staff is trying to do so, but there are severe barriers
22 contained in their position that, if allowed by this Commission to become state policy,
23 will result in energy efficiency investments by Missouri utilities that are far below the
24 level of "all cost-effective savings" envisioned by the Governor when he signed MEEIA.

25 **Q. What are these barriers?**

³ Governor Nixon press release, "Gov. Nixon signs legislation encouraging energy efficiency to save utility customers money." July 13, 2009.

1 A. The first barrier concerns Staff's position on when the utility can begin
2 recovering the costs of its programs in rates. The second barrier concerns the Staff's
3 position on amortizing energy efficiency costs. These positions pose grave challenges to
4 further AmerenUE investments in demand-side management (DSM) programs – today
5 and in the future. In addition, even if these barriers are removed, AmerenUE still has no
6 opportunity to earn returns on DSM investments that are equivalent to what it would
7 expect to earn with a new power plant. I will address this issue later in my testimony.

8 **Q. What is your understanding of Staff's position on when cost recovery**
9 **in rates can begin?**

10 A. Staff Witness Rogers states that such recovery can only begin after the
11 completion of *ex-post* evaluation of each energy efficiency program.

12 **Q. To your knowledge, does any other state have this requirement?**

13 A. No.

14 **Q. Why not?**

15 A. In my opinion, few if any utilities would invest significant capital in
16 energy efficiency programs on these terms. This is because utilities rightly view energy
17 efficiency investments as being more risky than supply-side investments in some
18 important ways. Building a “virtual power plant” from energy efficiency is nothing like
19 building a real power plant. Utilities are familiar with the risks of building real power
20 plants – we've been doing it for over 100 years. When the project is complete, the utility
21 flips the switch; power flows, and the utility then owns an asset on its books and earns a
22 return on that asset over its lifetime.

1 Investments in energy efficiency are very different. When a utility invests
2 in energy efficiency, it incurs expenses in an attempt to change the consumption behavior
3 of its customers. The utility has little experience in doing this; in the world outside
4 utilities (and utility stakeholders), this is called marketing. Utilities are, by and large, not
5 known today for their marketing prowess and neither are government agencies. This is
6 changing, and must change if we are to be successful in achieving the benefits of energy
7 efficiency for Missouri.

8 So in the pursuit of energy efficiency, the utility incurs a variety of
9 marketing expenses: research and design of programs, promotional costs, customer
10 incentives and evaluation costs, to name a few. It creates no assets for itself; customers
11 buy the equipment and own the assets.

12 Staff's proposal seeks to treat energy efficiency investments exactly like
13 power plants. An Allowance for Funds Used During Construction (AFUDC) is accrued
14 until the "plant" goes "into service," which in Staff's mind is when the *ex-post facto*
15 evaluation is complete. Assuming that customers, on average, behave as the utility
16 planned they would for every program, the utility then gets to start earning its costs back
17 over the "life" of the "asset," in Staff's methodology 10 years.

18 It is unfair to ask utility shareholders to wait 10 years (or more) for the
19 return of expenses incurred for tariffed services approved by this Commission. As an
20 Officer of AmerenUE, if Staff stands by its recommendation in this case, I would
21 recommend that my Company defer most, if not all of our DSM expenses, at least until
22 the Commission fully implements MEEIA through a formal rulemaking procedure.

1 I want to make one more point on this subject. Staff's position on this
2 issue is tantamount to assuming imprudence of utility investments until proven otherwise.
3 This seems to fly in the face of traditional regulatory practice in this state as I understand
4 it.

5 **Q. What is the Staff's position on the recovery period for DSM costs?**

6 A. Staff is proposing that AmerenUE continue to recover its DSM costs over
7 a 10-year amortization period. Staff has also included rate base treatment for the
8 unamortized balance of AmerenUE's DSM expenses.

9 **Q. Is Staff's rate base treatment of unamortized DSM expenses**
10 **supportive to AmerenUE's efforts to pursue DSM?**

11 A. Absolutely. While we are opposed to continuing the 10-year amortization
12 period, for reasons I discuss below, AmerenUE appreciates the Staff's clarification on
13 rate base treatment of unamortized DSM expenses.

14 **Q. In the Staff Report, Staff witness John Rogers' states that "This**
15 **analysis of DSM programs is analogous to how the addition of combustion turbines**
16 **is analyzed." Please comment.**

17 A. Earlier I discussed this barrier to achieving cost recovery of DSM
18 investments. I will supplement my response with information from Mr. Rogers'
19 deposition. Mr. Rogers understands that there are some very real differences between
20 combustion turbines and DSM resources. Mr. Rogers states that a DSM resource, such as
21 a compact fluorescent light bulb or CFL, produces energy savings immediately upon
22 installation.⁴ In this sense, a DSM resource is a virtual power plant that is used and
23 useful upon installation. Mr. Rogers acknowledges that AmerenUE has sole

1 responsibility for the operation of its combustion turbine generators (CTGs). Mr. Rogers
2 also acknowledges that AmerenUE has no control over how customers install or operate
3 various energy efficiency measures.⁵ Mr. Rogers believes that a CTG is determined cost
4 effective through the integrated resource planning process. Yet, even though DSM
5 resources must go through the same cost effectiveness testing in the integrated resource
6 planning process, Mr. Rogers states that it will take more time for DSM resources to be
7 determined cost effective post installation or outside of the integrated resource planning
8 analysis process. (Deposition page 136, lines 3-25, page 137, lines 1-2).

9 **Q. Does it appear that Staff may be giving preference to supply side**
10 **resources such as CTGs over DSM resources?**

11 A. Yes. Based on the DSM cost recovery of Staff supplemented by
12 Mr. Rogers deposition on the same issue, Staff understands that a CTG is very different
13 than a DSM resource. Staff is very willing to develop processes and procedures to
14 ascertain that new CTG additions are used and useful. On the other hand, Staff seems
15 reluctant to do the same for DSM resources.

16 **Q. Why is the Staff's position on amortization of DSM costs a barrier to**
17 **utility energy efficiency investments?**

18 A. Because the current recovery mechanism results in extreme regulatory lag
19 in recovering our DSM expenses. We are aware of no other jurisdiction which imposes a
20 lag on energy efficiency expenses anywhere close to Missouri's current policy. As
21 AmerenUE Witness Matt Michels discusses in his rebuttal testimony, under Staff's cost
22 recovery proposal, the regulatory asset for unrecovered DSM program costs grows to a

⁴ Rogers Deposition, p. 133, l. 23 through p. 134, l. 9.

⁵ Rogers Deposition, p. 137, l. 3-16.

1 balance of approximately \$481 million by the end of 2018. No party in this case has
2 disputed the fact that the DSM regulatory asset will grow to hundreds of millions of
3 dollars under Staff's current methodology. Given the additional fact that AmerenUE's
4 success in DSM depends on changing the ingrained energy consumption behavior of
5 thousands of individuals and businesses, the Commission should appreciate the
6 Company's reluctance to incur this level of regulatory risk. This is one important reason
7 why most other Commissions permit utilities to expense DSM costs and many allow
8 recovery outside full rate case proceedings, as I will discuss later in my testimony.

9 **Q. In Staff's Report, referring to your direct testimony, Witness Rogers**
10 **states that "while AmerenUE's proposal is a starting point for discussion, many**
11 **details of its proposal need to be clarified or determined." Are you providing**
12 **additional details in your rebuttal testimony as a response?**

13 A. Yes, I am.

14 **Q. Please describe the forecast expense tracker cost recovery mechanism**
15 **proposed by AmerenUE.**

16 A. The forecast expense tracker seeks to recover DSM program expenses
17 essentially as they occur by including in the utility's rates a forecast average expense
18 amount and then tracking the differences between that amount and actual expenses
19 incurred and capturing those differences in a regulatory asset for future recovery from, or
20 reimbursement to, customers. AmerenUE is proposing that the average of a two-year
21 forecast of expenses be used to set the annual expense recovery amount and that the
22 balance of any regulatory asset be amortized over three years, beginning with the
23 effective date of new rates as set in the Company's subsequent general rate case. The

1 regulatory asset would include the carrying costs, or credit, associated with amounts
2 recorded to the regulatory asset balance at the Company's AFUDC rate until amortization
3 of such costs begins. Once amortization commences, interest at AmerenUE's most recent
4 allowed return on rate base would be applied to the unamortized balance associated with
5 the costs being amortized. Examples of the calculations needed to determine the forecast
6 expense and expense true-up amounts are attached as Schedule SMK-ER3.

7 **Q. Why is an expense tracker appropriate for recovering these costs?**

8 A. An expense tracker is the most appropriate way to recover DSM expenses.
9 There are three important reasons which justify this expense treatment. First, the costs
10 involved are indeed expenses, as I explained earlier in my testimony. Second, expensing
11 of DSM costs is the method used by most jurisdictions, as I discuss below. Third, if
12 AmerenUE is to pursue aggressive deployment of DSM programs, then our annual costs
13 will increase substantially in the next few years. Mitigating the earnings erosion of
14 regulatory lag between cases would send a clear message of support from the
15 Commission for our efforts.

16 **Q. Is AmerenUE proposing an incentive mechanism for DSM**
17 **investments in this case?**

18 A. No. As I stated in my direct testimony, more experience with programs
19 and dialogue with stakeholders is necessary before we can make a specific proposal.
20 However, the issue must be addressed before the objectives of MEEIA can be achieved.

1 **Q. Does AmerenUE's cost recovery proposal fully meet the policy**
2 **objective of MEEIA, as expressed in the Governor's press release quoted earlier in**
3 **your testimony?**

4 A. No, it does not. As AmerenUE Witness Matt Michels states in his rebuttal
5 testimony, appropriately expensing DSM program costs is not sufficient to produce the
6 same level of earnings and return on equity (ROE) with implementation of DSM as is
7 available to AmerenUE without DSM. His analysis shows that AmerenUE's earnings
8 through 2018 are expected to be approximately \$70 million dollars lower, on a present
9 value basis, if we pursue the DSM programs contained in our most recent Integrated
10 Resource Plan (IRP). This situation clearly does not meet the policy objective of
11 MEEIA.

12 **Q. Should AmerenUE's proposal be considered a mainstream approach?**

13 A. Yes.

14 **Q. Please explain.**

15 A. I will cite several national references. The first reference is the National
16 Action Plan for Energy Efficiency (NAPEE) guide, "Aligning Utility Incentives with
17 Investments in Energy Efficiency". Table 1-2 shows DSM cost recovery mechanisms by
18 state as of September 2007. The majority of states have contemporaneous cost recovery
19 and/or either decoupling and/or lost revenue recovery and/or performance incentives.
20 The NAPEE Guide is attached to my testimony as Schedule SMK-ER4.

21 **Q. Are there other national references on DSM cost recovery**
22 **mechanisms?**

1 A. Yes. The Edison Electric Institute published its state regulatory
2 frameworks research in December 2009. The EEI research is attached to my testimony
3 as Schedule SMK-ER5. The EEI research shows that in the time between 2007 and 2009
4 even more states have been added to the list that have established regulatory frameworks
5 to provide the opportunity for contemporaneous cost recovery, lost revenue recovery, and
6 performance incentives.

7 **Q. Are there any other national references that you would like to cite to**
8 **show that AmerenUE's DSM cost recovery proposal is mainstream relative to other**
9 **states?**

10 A. Yes. The Regulatory Assistance Project (RAP) developed a presentation
11 dated November 20, 2009 that discusses energy efficiency incentives for utilities across
12 the nation. The RAP presentation is attached to my testimony as Schedule SMK-ER6.
13 Although the RAP presentation is primarily a primer on incentive mechanisms, the
14 presentation includes several examples of states that generally follow the DSM cost
15 recovery approach supported by AmerenUE.

16

17 **III. AMERENUE'S LIGHTING AND APPLIANCE PROGRAM**

18 **Q. In Staff's Report, John Rogers expressed concern that the Lighting**
19 **and Appliance program is very risky because the program's design had never been**
20 **implemented by a single utility that operates in a portion of a state, rather the**
21 **program has been only implemented throughout a state or region of the country.**
22 **Do you agree with this assessment?**

1 A. No. According to the 2009 ENERGY STAR Summary of Lighting
2 Programs, the following utilities offer buy-downs and mark-downs on CFLs similar to
3 the AmerenUE program:

4 Long Island Power Authority (LIPA)
5 NV Energy (Formerly Nevada Power and Sierra Pacific Power)
6 PacifiCorp (Rocky Mountain Power and Pacific Power)
7 Pacific Gas & Electric
8 San Diego Gas & Electric
9 Southern California Edison
10 Baltimore Gas & Electric
11 PEPCO
12 Dominion
13 Ameren Illinois Utilities
14 ComEd
15 Dayton Power & Light
16 Connecticut Light & Power
17 United Illuminating
18 National Grid Massachusetts
19 National Grid Rhode Island
20 Idaho Power Company
21 Puget Sound Energy
22 Entergy
23 Arizona Public Service
24 Tucson Electric Power
25 El Paso Electric
26 Public Service of New Mexico

27
28 **Q. What type of understanding does Mr. Rogers have as to the extent**
29 **and nature of market transformation programs conducted on a statewide basis?**

30 A. Although Mr. Rogers has some understanding, it became clear in his
31 deposition that there are some informational gaps. Mr. Rogers claimed that he is aware
32 of two state-wide market transformation programs. The first is the Northwest Energy
33 Efficiency Alliance (NEEA). The second program he named is New York Energy Smart.
34 Mr. Rogers stated that all the programs within each of these multi-jurisdictional entities
35 were one program and he relies on that fact as the basis for his "concern" with

1 AmerenUE's program not being offered statewide.⁶ Mr. Rogers is misinformed about
2 the facts. The fact is that there are five investor owned utilities in NEEA. They are:

- 3 • Avista Utilities
4 • Idaho Power Company
5 • Northwestern Energy
6 • PacifiCorp
7 • Puget Sound Energy
8

9 Each utility has different incentive levels for different retail partners for
10 their individual lighting and appliance programs. Program delivery also varies with
11 several of the utilities using direct rebates. Some programs have limits on the minimum
12 and maximum number of CFLs that may be eligible for rebates. New York Energy Smart
13 is a program offered by The New York State Energy Research and Development
14 Authority (NYSERDA). NYSERDA is not a consortium of municipal, cooperative and
15 investor owned utilities. NYSERDA is a public benefit corporation that is funded by
16 state ratepayers through a system benefits charge. Investor owned utilities in New York
17 do not have lighting and appliance programs.

18 **Q In your prior list of utilities with lighting and appliance market**
19 **transformation programs, are all of those state-wide programs?**

20 A. Many of the programs listed above include several utilities located in the
21 same state and some may work together in consortiums. However, none of these
22 programs is truly state-wide. All areas will have pockets where homes are served by
23 cooperatives or municipals and not the regulated electric utility. In addition, adjacent
24 utilities may not run exactly the same programs. For example, the Ameren Illinois
25 Utilities and Commonwealth Edison both run lighting market transformation programs.

⁶ Rogers deposition, p. 44, l. 23 through p. 46, l. 23.

1 However, the Commonwealth Edison program includes grocery chains and Walmart,
2 while the Ameren Illinois program does not. The Ameren Illinois program shows the
3 discount available on bulbs at each participating retailer on its website, while the
4 Commonwealth Edison program simply lists participating retailers. Both have online
5 stores, but the Ameren Illinois Utilities store only offers CFLs. The Commonwealth
6 Edison online store offers a wide range of products including light fixtures, insulation and
7 thermostats. The same 15W Harmony Lightwiz mini-spiral that costs \$1 with free
8 shipping on the Ameren Illinois Utilities website, costs \$3.25 on Commonwealth
9 Edison's website plus shipping costs.

10 **Q. Mr. Rogers goes on to state that the impacts of market transformation**
11 **programs are very difficult to measure. Do you agree?**

12 A. No. AmerenUE and The Cadmus Group (Cadmus), the independent
13 evaluator of the Residential Energy Efficiency Portfolio, believe that the impacts of
14 market transformation programs are measured differently than traditional rebate
15 programs, but are not necessarily more difficult to measure. Their methodology is not
16 new, is considered best practice, and is used by similar programs in New York,
17 Massachusetts, and California.

18 **Q. Is Mr. Rogers' concern over the difficulty of measuring the impact of**
19 **market transformation programs consistent with the discussion of this issue in his**
20 **deposition?**

21 A. No, it was not. In Mr. Rogers' portion of the Staff Report, he listed his
22 concern with the difficulty in measuring the impact of market transformation programs.
23 In Mr. Rogers' deposition, he stated that the approach being followed by AmerenUE's

1 residential program evaluation contractor, Cadmus, is “probably the only or the best way
2 to measure the impact of the [Lighting & Appliance] program.”⁷ Mr. Rogers thinks that
3 AmerenUE’s evaluation contractor is following the best approach to evaluate the
4 program. Finally, Mr. Rogers admitted he had no recommendations on how to improve
5 the evaluation process.

6 **Q. Please describe the current best practice evaluation approach for**
7 **market transformation programs being implemented by Cadmus and AmerenUE.**

8 A. Cadmus has attended two quarterly meetings with stakeholders to present
9 their evaluation approach. The following is an excerpt from their evaluation plan for the
10 Lighting and Appliance program:

11 *An upstream market transformation program such as AmerenUE’s*
12 *Lighting and Appliances Program does not offer direct incentives to*
13 *residential end-use customers. In fact, because the Program’s efforts are*
14 *primarily focused on retailer training and increasing the in-store*
15 *availability of ENERGY STAR lighting and appliances, the Program itself*
16 *may be somewhat transparent to those actually purchasing incentivized*
17 *efficiency measures. As a result, implementing a self-reported net-to-gross*
18 *evaluation approach (i.e., direct solicitation of AmerenUE customers*
19 *regarding what they would have done in absence of the Program) is not*
20 *the most appropriate strategy. Further, because upstream programs work*
21 *with multiple market actors and include wide-reaching marketing*
22 *campaigns promoting energy efficiency to the general public, they tend to*
23 *stimulate freedrivership/spillover or “market effects”. A standard self-*
24 *report net-to-gross (NTG) approach using only AmerenUE customers*
25 *purchasing CFLs would not capture these effects and therefore may*
26 *understate the true impact of the Program.*

27
28 Given all of these factors, Cadmus will employ a market-based evaluation
29 approach to measure the Program’s impact on the market for ENERGY STAR qualified
30 CFLs within AmerenUE’s service territory. A market-based evaluation approach, which
31 assesses changes in the market for ENERGY STAR CFLs as a whole, rather than

⁷ Rogers deposition, p. 63, ll. 8-10).

1 evaluating and aggregating the individual decision-making processes of specific CFL
2 purchasers, is the most appropriate and most often employed evaluation method for
3 assessing market transformation programs. Evaluating total market change will capture
4 any “market effects” generated by AmerenUE’s efforts.

5 **Q. How will Cadmus’ approach account for the argument that CFL sales**
6 **have been on the increase simply due to naturally occurring energy efficiency?**

7 A. In Cadmus’ effort to evaluate the Program and determine the net energy
8 savings associated with it, it is important to quantify both the portion of the observed
9 market change generated by natural market forces and that attributable to AmerenUE’s
10 program. To do this, the market-based evaluation approach compares the change in
11 product sales from other service territories *not* implementing a utility efficiency program
12 similar to that of AmerenUE. By observing the market change in areas experiencing
13 naturally occurring market forces (federal campaigns, retailer promotions, etc.) but not a
14 utility program, Cadmus can estimate the market change likely to have occurred in
15 AmerenUE’s territory had the program **not** been implemented. Subtracting the estimated
16 level of naturally occurring sales from the total sales determined in AmerenUE’s service
17 territory reveals the sales attributable to the program itself. In summary, market-based
18 evaluation focuses on estimating the sales that are *incremental* to these other efforts and a
19 direct result of a utility’s intervention in the market.

20 **Q. Staff has expressed concerns over identifying and quantifying**
21 **“leakage” that may be associated with the Lighting and Appliance program. What**
22 **is “leakage”?**

1 A. “Leakage” refers to program benefits that may be received by customers
2 outside the utilities’ service area. An example of leakage is that a customer of a
3 cooperative electric utility located in close proximity to the AmerenUE service territory
4 who may purchase a discounted CFL at an AmerenUE partner retail store within the
5 AmerenUE service territory. Because leakage was a specific concern expressed by Staff
6 in quarterly meetings, Cadmus increased the number of customer intercepts they will use
7 to assess leakage in excess of 95% confidence and 5% precision. AmerenUE continues
8 to remain flexible and is willing to address any specific concerns Staff has on the
9 evaluation of any of our residential energy efficiency programs.

10 **Q. What was Mr. Rogers’ deposition position on the issue of leakage?**

11 A. Mr. Rogers expressed concern that AmerenUE’s service territory is
12 intertwined with those of municipal and cooperative systems. Therefore, the opportunity
13 exists for a non-AmerenUE customer to receive benefits from an AmerenUE sponsored
14 energy efficiency incentive program at a retail store located near the boundaries of
15 service territories.⁸

16 **Q. How valid is Mr. Rogers’ concern?**

17 A. Mr. Rogers dismissed his concerns over leakage in his deposition. When
18 asked if the entire State of Missouri implemented the program, would there be leakage to
19 states surrounding Missouri, Mr. Rogers stated that there would be. Ultimately,
20 Mr. Rogers agreed that the only way to completely stop leakage is for the entire nation to
21 implement the program.⁹

⁸ Rogers deposition, p. 48, ll. 21-25.

⁹ Rogers deposition, p. 53, ll. 1-25.

1 **Q. Mr. Rogers also states that AmerenUE has not provided the Staff with**
2 **any meaningful quarterly progress reports on the Lighting and Appliance program.**
3 **Do you agree with this statement?**

4 A. No. AmerenUE has held quarterly meetings with Staff and other
5 stakeholders to provide updates on all energy efficiency and demand response programs.
6 Updates on the Lighting and Appliance program were provided at every meeting.
7 However, these updates have not historically included energy savings and budget results,
8 for two reasons. First, the nature of the promotions meant that sales results were not
9 reported by retailers and manufacturers until after the first program year ended. The first
10 program year was scheduled to end September 30, 2009 and was extended until
11 December 31, 2009 to ease the transition from Lockheed Martin (AmerenUE's former
12 program administrator) to Applied Proactive Technologies (the current program
13 administrator). Consequently, Program Year 1 results were not available until the
14 quarterly meeting held in February 2010. Second, AmerenUE was in settlement
15 negotiations over its contract dispute with Lockheed Martin and did not know final
16 program costs until a settlement was reached in November 2010. Therefore, program
17 costs could also not be reported until the February 2010 meeting.

18 **Q. Will there be changes to the frequency of program reporting going**
19 **forward?**

20 A. Yes. Going forward, AmerenUE will report program impacts and costs to
21 stakeholders at regularly scheduled quarterly update meetings. Mr. Rogers created a
22 spreadsheet to be used as a "scorecard" to keep track of progress on all AmerenUE

1 energy efficiency and demand response programs, and AmerenUE has committed to
2 updating this scorecard at each quarterly meeting.

3 **Q. Mr. Rogers also recommended that the cost of the Lighting and**
4 **Appliance program remain in the regulatory asset account until evaluation is**
5 **complete in two to three years. Do you agree?**

6 A. Absolutely not. The costs for the Lighting and Appliance program
7 incurred to date should be included in rate base immediately. AmerenUE has received all
8 of the sales reports for the original Program Year 1. In the future, sales data will be
9 provided to AmerenUE on a monthly basis. AmerenUE is tracking program sales in a
10 database which calculates program megawatt-hour (MWH) savings based on stipulated
11 values for wattage differential with comparable incandescent bulbs and average burn
12 hours. The calculated MWH savings also use a conservative net-to-gross ratio of 80%. It
13 is common for programs to use stipulated values to calculate energy savings. The
14 savings are then trued up after the evaluation is complete. For AmerenUE programs, this
15 true-up is an annual process. The first Evaluation Report on the Lighting and Appliance
16 program is due March 31, 2010. Subsequent annual reports are due March 31, 2011 and
17 March 31, 2012. Mr. Rogers appears to be referring to the final report on all three project
18 years which is due June 30, 2012. However, this final report is a summary of the three
19 annual reports. Each annual report will include impact analyses and report net kilowatt-
20 hour (kWh) savings and Total Resource Cost (TRC) test results from the prior Program
21 Year.

22 Beyond the fact that there is no need to wait three years to start recovery of these
23 costs, such regulatory treatment further increases regulatory lag and provides a strong

1 disincentive for AmerenUE, or any utility, to pursue energy efficiency programs,
2 especially any program that is innovative with respect to current practice in Missouri.

3 **Q. Do you agree with Mr. Rogers that the Lighting and Appliance**
4 **program has a relatively low benefit to AmerenUE's residential ratepayers?**

5 A: No. All of AmerenUE's energy efficiency programs must pass cost-
6 benefit tests in the Integrated Resource Planning process. The Total Resource Cost test is
7 recalculated based upon final program designs. These calculations are shared with Staff
8 prior to filing program tariffs. The most recent TRC provided for the Lighting and
9 Appliance program is 3.57, which is higher than the original TRC for the Lighting and
10 Appliance Program from the Integrated Resource Plan, which was 2.29. In fact, it is
11 higher than any of the TRC results originally anticipated for any residential program in
12 the Integrated Resource Plan. In addition, the Lighting and Appliance Program also
13 provides the greatest MWH savings of all of the programs planned for the residential
14 portfolio, accounting for over half of the portfolio savings.

15
16

IV. IMPLEMENTATION OF AMERENUE'S DSM PROGRAMS

17 **Q. In Staff's Report, Staff Witness Adam McKinnie states, "Of the**
18 **fifteen demand-side programs in AmerenUE's Electric Resource Planning filing on**
19 **February 5, 2008, only eight have been implemented and all eight were implemented**
20 **later than designated in the implementation plan by from 5 months to 10 months."**
21 **Is this true?**

22 A. It is true that our DSM programs have been implemented later than
23 originally expected. It is also true that the programs already in the field represent 89% of
24 our overall goal for DSM established in our last IRP, measured by savings expected in

1 the third year of implementation. So, while some programs have not yet been
2 implemented, the programs now in the field are targeting the vast majority of the savings
3 potential identified in AmerenUE's last IRP.

4 **Q. Why were the programs implemented later than originally planned?**

5 A. AmerenUE believes that DSM programs are our most cost-effective
6 resource for meeting future consumer demand at least cost, but implementing our
7 programs has proved more challenging than we anticipated when we filed our IRP. The
8 most important challenge, which was not fully factored into the IRP implementation plan,
9 was the time to acquire resources to design and implement full-scale DSM programs.
10 While speed to market is important, managing the risks of starting up such a large new
11 initiative is much more important. AmerenUE sought to mitigate startup risks, to
12 customers as well as shareholders, by outsourcing most of the labor for implementing our
13 DSM programs. During restructuring over the last 10-15 years, AmerenUE eliminated
14 most of its internal marketing capability. Today, most of the labor associated with our
15 programs is outsourced. Given the lack of required internal experience, our lowest-risk
16 course, and the fastest way we could get programs into the field at a large scale, was to
17 rely on outsourcing.

18 **Q. Describe the process that AmerenUE used to select its DSM program**
19 **prime contractors for program implementation.**

20 A. The first step in the process was to engage a national DSM consulting firm
21 to assist in the development, administration and evaluation of a comprehensive request
22 for proposals (RFP) to engage contractors to administer AmerenUE DSM programs
23 outlined in the AmerenUE 2008 IRP filing.

1 **Q. What consulting firm did AmerenUE engage?**

2 A. AmerenUE engaged Summit Blue Consulting on December 21, 2007.

3 Note that this was before AmerenUE filed its most recent IRP.

4 **Q. Describe the decision making process for selecting Summit Blue.**

5 A. An RFP was issued and Summit Blue was selected on the basis of the
6 quality of their bid relative to other bidders.

7 **Q. Describe the scope of work assigned to Summit Blue.**

8 A. Summit Blue worked with AmerenUE to develop a comprehensive RFP to
9 solicit a prime contractor(s) to implement the AmerenUE residential and business
10 portfolios of DSM programs. Summit Blue developed a website to both post and answer
11 any and all questions from potential bidders to the RFP. Summit Blue independently
12 administered the RFP and assisted in the evaluation of bids to the RFP.

13 **Q. When was the DSM program implementation RFP issued and when
14 were contracts awarded to the successful bidders?**

15 A. The RFP was issued on February 25, 2008. A final contract, with a
16 negotiated statement of work, was finalized with Lockheed Martin on August 14, 2008.

17 **Q. Is 6 months a reasonable amount of time for negotiating these
18 contracts?**

19 A. Yes. We followed our internal contracting procedures and added
20 additional legal reviews, since this was the first time that AmerenUE had entered into
21 contracts of this type. For the first time through such a process, 6 months is reasonable. I
22 would expect to improve on this substantially the next time such contracts are negotiated.

1 **Q. Describe the process that AmerenUE used to select its DSM program**
2 **prime contractors for program evaluation.**

3 A. Similar to how AmerenUE developed its RFP to select a program
4 implementation contractor, AmerenUE engaged an expert evaluation, measurement, and
5 verification (EM&V) contractor to assist in the development, administration, and
6 evaluation of the RFP.

7 **Q. Who was the EM&V contractor selected by AmerenUE?**

8 A. Schiller Consulting was selected. Steven R. Schiller served as the project
9 manager and primary author of the National Action Plan For Energy Efficiency "Model
10 Energy Efficiency Program Impact Evaluation Guide."

11 **Q. Discuss the scope and schedule associated with Mr. Schiller's work.**

12 A. A statement of work was finalized with Mr. Schiller on March 8, 2008.
13 The RFP to elicit bids from EM&V contractors was released on April 25, 2008.
14 Statements of work with the successful EM&V contractors, Cadmus Group for the
15 residential portfolio and ADM for the business portfolio, were finalized on September 9,
16 2008.

17 **Q. When were the first AmerenUE DSM programs offered to customers?**

18 A. The first business DSM programs were offered on February 11, 2009.

19 **Q. What caused the delay in implementing programs?**

20 A. The primary reason was that Ameren senior management placed a hold on
21 most ongoing projects during the fourth quarter of 2008, due to financial pressures.
22 While we continued program design and tariff development, offering the programs to
23 customers was delayed until the first quarter of 2009.

1 **Q. What are AmerenUE's plans for implementing the remaining DSM**
2 **programs in its IRP portfolio?**

3 A. AmerenUE's plans for the existing and any additional DSM programs are
4 dependent on the outcome of the Commission's decision on DSM cost recovery in this
5 case. AmerenUE is currently designing the next two residential programs to compliment
6 our existing three programs. AmerenUE will monitor the rate case as it proceeds and will
7 be prepared to roll out these important programs during the second quarter of 2009.

8
9 **V. MIEC'S POSITION ON DSM COST RECOVERY**

10 **Q. Are you familiar with the Direct Testimony of MIEC witness Maurice**
11 **Brubaker?**

12 A. Yes, I am. Among other issues, Mr. Brubaker presents MIEC's position
13 on cost recovery of the utility's DSM expenses.

14 **Q. In summary, what is Mr. Brubaker's position on recovery of DSM**
15 **expenses?**

16 A. Mr. Brubaker is in essential agreement with Staff's position, namely
17 amortization over a 10-year period.

18 **Q. So your testimony concerning Staff's position on this issue applies**
19 **equally to Mr. Brubaker's position, is that correct?**

20 A. Yes. I disagree with Mr. Brubaker's arguments and analysis for the same
21 reasons that I disagree with Staff.

22 **Q. In his direct testimony, Mr. Brubaker states, "Just as depreciation**
23 **over the expected life of an asset is the norm for supply-side resources, amortization**

1 **of the regulatory asset over the life of the related demand-side measure is the**
2 **appropriate recovery period for demand-side resources.” Do you agree?**

3 A. Absolutely not. Like many other regulatory assets that are currently on
4 AmerenUE’s books, our DSM costs are expenses that are being accrued into a regulatory
5 asset for later adjudication in a rate case. The assumed economic life of appliances
6 purchased by our customers is irrelevant; the utility’s costs are expenses, as I have
7 demonstrated earlier in my testimony.

8 In some instances, in order to spread out highly volatile expenses, like
9 storm costs, the Commission uses amortization. This is not the case for AmerenUE’s
10 DSM expenses; if a supportive regulatory framework is established in Missouri, our
11 DSM costs will steadily increase over the next few years. Adopting the cost recovery
12 mechanism I have proposed in my testimony would begin establishing this framework
13 and encourage Missouri utilities to pursue energy efficiency resources.

14 **Q. Mr. Brubaker discusses identifying the dollar amounts associated**
15 **with AmerenUE’s DSM programs and determining a credit for those customers**
16 **who opt out as allowed for under MEEIA. Would you address his comments?**

17 A. MEG witness Billie Sue LaConte makes much the same argument, in a bit
18 more detail, and I will address that issue below.

19
20

VI. MEG’S POSITION ON DSM COST RECOVERY

21 **Q. Are you familiar with the direct testimony of MEG witness Billie Sue**
22 **LaConte?**

23 A. Yes. Ms. LaConte’s testimony is focused upon energy efficiency and
24 MEEIA. She makes two points; first she provides a calculation of how AmerenUE could

1 separate energy efficiency costs from the other costs. Secondly, she discusses the ability
2 of certain customers to “opt out” of energy efficiency costs as provided for under
3 MEEIA.

4 **Q. Is the methodology proposed by Ms. LaConte sufficient to separate**
5 **energy efficiency costs?**

6 A. No. Ms. LaConte’s methodology looks only at the dollar costs of energy
7 efficiency measures. Of course, there are offsetting benefits to those costs, which must
8 also be factor. If it is true that energy efficiency is a low cost resource, then when a
9 customer opts out, they are in essence, opting into higher cost resources. It is even
10 possible that customers who opt out could end up paying higher rates than those
11 customers who do not. The calculation provided by Ms. LaConte simply does not
12 capture all relevant factors and should not be adopted at this time. However, while this is
13 likely not a simple calculation, AmerenUE agrees it is a calculation that needs to be
14 completed, perhaps in File No. EW-2010-0187 and/or the subsequent rulemaking
15 required by MEEIA. I do not believe it is necessary for the Commission to set forth the
16 calculation in this case.

17 Finally, I would point out that MEEIA contains an explicit restriction on
18 the Commission adopting a rate design modification prior to completing a docket to study
19 this matter and completion of a rulemaking. As neither has yet occurred, the Company
20 cannot, at this time, effectuate a rate design modification to implement the opt out
21 provision of MEEIA. The removal of DSM costs for customers who opt out would
22 require a modification to AmerenUE’s rate design – either by creating new rates or

1 classes for customers that opt out or designing some type of crediting mechanism. As
2 such, the statements of both Mr. Brubaker and Ms. LaConte on this issue are premature.

3 **Q. Please address Ms. LaConte's discussion of how the "opt out" portion**
4 **of MEEIA works.**

5 A. Ms. LaConte points out that MEEIA allows customers who opt out to still
6 participate in interruptible or curtailable programs. I do not disagree with that statement.
7 However, she labels Rider L and Rider M as curtailable programs and asserts that her
8 clients that opt out may still participate in these programs. I believe this to be an
9 incorrect reading of MEEIA. While I agree that MEEIA allows customers who opt out to
10 participate in interruptible or curtailable programs, it categorizes interruptible or
11 curtailable as a subpart of demand-side programs, along with demand response programs.
12 This indicates interruptible or curtailable programs are different from demand response
13 programs. Accordingly, I do not believe a customer who opts out under MEEIA is
14 allowed to participate in demand response programs.

15 There are two very different types of these programs. The first type is
16 controllable, in which the utility exercises control of when the customer curtails load.
17 Typically, the customer pays a lower rate for electric service because the service may be
18 interrupted. The customer is told when to interrupt by the utility and there may be
19 financial consequences to the customer if the customer does not comply with a
20 curtailment call by the utility. This type of a program also typically requires the customer
21 to set an assurance power level, which becomes the maximum amount of service the
22 customer may take during a curtailment call without incurring a penalty. AmerenUE
23 does not have any curtailable or interruptible tariffs at this time.

1 The second program type is demand response. In this type of a program,
2 the customer decides when load is reduced. A curtailment is not called by the utility.
3 Instead, price signals are used as an incentive for the customer to reduce load. If the
4 price offered is sufficient to induce the customer to act, i.e., reduce load, the customer
5 will receive payment at an agreed upon price for reducing load. If the customer does not
6 reduce load, there is no penalty assessed nor is there an impact on the rate the customer
7 pays. Price responsive programs empower customers to choose the level of risk that best
8 suits them.

9 Rider L and Rider M are both demand response programs. Rider L is
10 explicitly a demand response program. It offers customers a price that includes a long
11 run capacity price component in addition to the traditional market energy price
12 component, but it contains no requirement to reduce load nor does it impose a penalty if a
13 customer does not reduce its load. Rider M predates MEEIA and so does contain the
14 language "curtailment." However, when one reads the tariff, it is apparent this tariff is
15 not one under which AmerenUE controls when service to a customer is curtailed. Rider
16 M is not properly classified as a curtailable tariff as the terms are used by MEEIA.
17 Because neither Rider L nor Rider M are curtailable or interruptible programs, a customer
18 who opts out is ineligible to participate in either tariff.

19
20

VII. RATE CASE EXPENSE

21 **Q. Staff has recommended that \$1,000,000 be included in AmerenUE's**
22 **revenue requirement for rate case expenses. Do you agree with its**
23 **recommendation?**

1 A. No, I do not. Calling it a survey of Missouri utilities, Ms. Ferguson
2 looked at how much had been allowed for the rate cases of Kansas City Power & Light's
3 (KCPL), KCP&L Greater Missouri Operations Company and the steam operations of
4 KCP&L Greater Missouri Operations Company. Using that dollar amount, Ms. Ferguson
5 made the arbitrary recommendation that AmerenUE's external rate case costs be capped
6 at \$1 million.

7 Ms. Ferguson does not point to any cost of AmerenUE as imprudent or
8 give any other reason why any portion of AmerenUE's rate case expenses should not be
9 recovered. This certainly isn't supported by the long tradition of regulation in Missouri,
10 which obligates the Commission to provide the utilities it regulates with a reasonable
11 opportunity to recover prudently incurred costs. The Commission does not look at the
12 cost to operate a baseload coal plant of KCPL and use that fact to determine the
13 appropriate cost for AmerenUE to operate one of its baseload coal plants. If expenses are
14 properly incurred, they must be allowed as a part of rates. AmerenUE believes this
15 principle lies at the heart of sound utility regulation, is good public policy and sees no
16 reason to depart from this long held tradition.

17 Ms. Ferguson's survey does not take into account the many differences
18 between an AmerenUE rate case and KCPL's. Her argument ignores that AmerenUE is
19 by far the largest utility in Missouri (KCPL's Missouri and Kansas customers number
20 just under half as many as AmerenUE) and that its rate case filings involve large sums
21 and many complex issues, and include numerous intervening parties. AmerenUE's
22 current rate request is for an increase of \$402 million. The three KCPL cases surveyed
23 by Staff in total requested an overall increase of \$185.9 million. Another example of the

1 difference is the very large number of local public hearings that were held in this and in
2 the last AmerenUE rate case – 17 (plus an all day “listening post”) in this rate case, and
3 almost as many in the last rate case. This compares to a more normal level of local
4 public hearings in the KCPL cases cited by Staff which had a total of four public
5 hearings. AmerenUE rate cases also attracted numerous intervenors, many of which are
6 active participants throughout the entire case.

7 **Q. Has AmerenUE’s utilization of external resources for rate case**
8 **support been dropping in recent years?**

9 A. Yes, it has. Since I assumed responsibility for AmerenUE’s state
10 regulatory affairs in October 2007, we have reduced the use of external experts in
11 preparing and defending our rate cases. This not only benefits our customers; it is
12 building important internal expertise.

13 The following table shows our actual rate case expenses for the last two cases and
14 our estimated expenses for this case:

	ER-2007-0002	ER-2008-0318	ER-2010-0036
	<u>Actual</u>	<u>Actual</u>	<u>Estimated</u>
Outside Legal	\$1,147,557	\$ 600,737	\$ 685,000
External Consultants	\$2,411,420	\$1,309,810	\$1,350,000
Other	<u>\$ 370,465</u>	<u>\$ 170,531</u>	<u>\$ 85,000</u>
Total	\$3,929,442	\$2,081,078	\$2,120,000

15
16 AmerenUE has decreased its reliance on outside consultants, reduced the number
17 of external witnesses and otherwise taken steps to reduce its rate case expense over the
18 last few years. However, even with this diligent effort, the importance of rate cases to the
19 well being of the Company and the number and complexity of issues involved make it

Rebuttal Testimony of
Stephen M. Kidwell

- 1 impossible to fully prosecute this case without the outside assistance AmerenUE has
- 2 used.

1 **Q. OPC makes an even more aggressive recommendation, arguing that**
2 **certain costs only benefit shareholders and so shouldn't be allowed at all and that**
3 **the remaining, prudent expenditures should be shared between customers and**
4 **shareholders. How do you respond?**

5 A. Mr. Trippensee's argument is based upon pure assertion rather than
6 anything the Commission could rely upon in this case. He argues that AmerenUE should
7 be able to prepare and prosecute a rate case with internal labor, citing the number of
8 attorneys and other internal experts that the Company has in house. Mr. Trippensee does
9 not back his claims with facts. For example, Mr. Trippensee asserts that AmerenUE
10 shouldn't need external attorneys as it has attorneys in house with regulatory experience.
11 He attaches a data request response which indicates the Company and/or its affiliates
12 employ nine attorneys with "regulatory experience." What Mr. Trippensee fails to
13 recognize is those attorneys, with the exception of Thomas Byrne and Wendy Tatro,
14 already have full time jobs representing the Company or an affiliate in front of another
15 regulatory agency. Some do regulatory work for AmerenUE's Illinois affiliates at the
16 Illinois Commerce Commission, some at the Federal Energy Regulatory Commission,
17 some at the Nuclear Regulatory Commission, some at the Environmental Protection
18 Agency, etc. In fact, OPC, Staff and the Commission are all aware that Mr. Lowery
19 represents AmerenUE in many regulatory matters in front of the Commission, even
20 outside of a rate case. Additional attorneys are hired as needed and that need increases
21 during rate cases due to the amount of legal work involved.

22 Much the same is true for the external experts hired by AmerenUE. While
23 the Company probably could find someone internally to file return on equity testimony,

1 that person already has a full time job that is important to the Company. One example is
2 the oft-repeated notion that there are at least three individuals who have filed cost of
3 capital testimony. Mr. Birdsong, one of the three listed, is Treasurer and is certainly
4 otherwise occupied with dealing with Company financings, which are necessary to
5 provide service to our customers at just and reasonable rates. Mr. O'Bryan, yet another
6 of the named three, has provided testimony on AmerenUE's capital structure and cost of
7 debt, but not on ROE.

8 **Q. Does Mr. Trippensee make any other unsubstantiated assertions or**
9 **recommendations to which you'd like to respond?**

10 A. He does. He claims that costs which primarily benefit shareholders should
11 not be recoverable and then goes on to allege that ROE testimony only benefits
12 shareholders. This reasoning reveals a fundamental misunderstanding of the purpose of
13 ROE testimony. In the much quoted *Bluefield* case, the Supreme Court stated, "A public
14 utility is entitled to such rates as will permit it to earn a return on the value of the
15 property which it employs for the convenience of the public equal to that generally being
16 made at the same time and in the same general part of the country on investments in other
17 business undertakings which are attended by corresponding risks and uncertainties..."¹⁰
18 Further, as explained in the direct testimony of AmerenUE witness Warner Baxter, it is
19 better for customers to be served by a utility that has a reasonable opportunity to recover
20 its costs and earn a fair return on investment, as it improves cash flows, enhances credit
21 ratings and provides access to capital at a lower long-term cost.

¹⁰*Bluefield Water Works & Improvement Co. v. PSC of the State of W. Va., et al.*, 262 U.S. 679, 692 (1923).

1 Mr. Trippensee also recommends splitting prudent expenditures 50/50
2 between shareholders and customers. As I stated above, the Commission has an
3 obligation to provide the utilities it regulates with a reasonable opportunity to recover
4 prudently incurred costs. Mr. Trippensee's recommendation to split prudent expenditures
5 50/50 violates this very important principle.

6
7

VII. EEI DUES

8 **Q. Staff witness Lisa Ferguson recommended disallowance of all fees**
9 **related to AmerenUE's membership in EEI, arguing that EEI's role is one of**
10 **legislative and regulatory lobbying. Is this an accurate characterization?**

11 A. No, it is not. And I think the Commission has historically recognized that
12 there may be a customer benefit to EEI, as reflected in two KCPL rate cases. However,
13 the Commission indicated there needed to be a better quantification or explanation of that
14 benefit to customers. It does not appear that the Commission has made a definitive
15 statement on this cost.

16 **Q. Do you believe AmerenUE's customers benefit from AmerenUE's**
17 **membership in EEI?**

18 A. Absolutely they do. Some recent EEI activities that benefit AmerenUE
19 ratepayers include EEI's leadership role in developing climate change points of
20 agreement within its membership and in communicating industry views to policymakers.
21 EEI has organized activities with key stakeholders to support climate change legislation
22 that protects the environment and electricity consumers. In this regard, EEI is working
23 with NARUC, the National Governors Association, the National Conference of State
24 Legislators, the National Association of Counties and others. EEI has also launched a

1 new campaign and Website (www.SmartClimatePolicy.org) to educate stakeholders and
2 stimulate thoughtful interaction. As the legislation winds its way through the Senate, EEI
3 continues this work with a particular focus on helping to reduce consumer cost increases.
4 This past summer, EEI organized a series of CEO meetings that resulted in visits with 32
5 senators.

6 EEI is also working to keep members informed and involved in the
7 American Recovery and Reinvestment Act (ARRA) implementation, including notifying
8 members of ARRA-related funding opportunities such as smart grid, energy efficiency,
9 conservation and renewable programs. To that end, EEI has created a Stimulus
10 Implementation Internet Workroom with 500 member company participants and is
11 working with stakeholders to respond to numerous initiatives from FERC and DOE in
12 implementing ARRA provisions.

13 EEI is currently working with member companies and various
14 Congressional committees in crafting legislation to address cyber attacks against the
15 electric power grid and to identify vulnerabilities that could be exploited. EEI
16 representatives recently testified before Congress on industry efforts to secure the electric
17 grid against physical and cyber attacks.

18 Another significant issue facing electric utilities is derivatives reform.
19 EEI is working on both legislative and regulatory fronts to shape effective derivatives
20 reform that preserves the OTC derivatives market for utilities and other end users.
21 Derivative reform legislation or regulation could cost AmerenUE millions of dollars if it
22 requires AmerenUE to trade on exchanges for which it would have to pay exchange fees

1 and incur higher collateral requirements for its hedging activities thus negatively
2 impacting customers.

3 On the federal regulatory front, EEI has worked with its member
4 companies to develop coordinated responses in support of FERC's proposed policy
5 statement and action plan on smart grid devices and systems. EEI and its member
6 companies continue to encourage FERC to work closely with NIST in support of the
7 development of interoperability standards.

8 EEI has developed an online compliance training module to assist
9 companies in developing a culture of compliance with FERC's mandatory reliability
10 standards (the Reliability Training Tool). Additional compliance training tools are also
11 available and being used at AmerenUE, to help ensure compliance with the standards of
12 conduct and anti-market manipulation rules.

13 EEI worked with its member companies and joined NARUC, NRECA and
14 APPA to submit comments on an EPA proposal to develop a waste heat recovery
15 registry, urging greater accuracy in estimating economic feasibility and state rate
16 treatment of combined heat and power.

17 Finally, EEI's new Institute for Energy Efficiency is playing a key role in
18 promoting the benefits of energy efficiency to all stakeholders and providing a national
19 perspective on state regulatory frameworks supporting utility energy efficiency programs,
20 such as the report I have included in my testimony.

21 **Q. Has AmerenUE already excluded from its revenue requirement that**
22 **portion of EEI dues attributable to lobbying activity?**

Rebuttal Testimony of
Stephen M. Kidwell

1 A. Yes, we have. EEI's billing to AmerenUE is segregated such that
2 lobbying costs are specifically identified. This amount was excluded from the
3 Company's cost of service studies prepared for this case.

4 **Q. Does this conclude your rebuttal testimony?**

5 A. Yes, it does.

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

In the Matter of Union Electric Company d/b/a) Case No. ER-2010-0036
AmerenUE's Tariffs to Increase its Annual) Tracking No. YE-2010-0054
Revenues for Electric Service.) Tracking No. YE-2010-0055

AFFIDAVIT OF STEPHEN M. KIDWELL

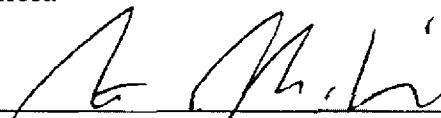
STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

Stephen M. Kidwell, being first duly sworn on his oath, states:

1. My name is Stephen M. Kidwell. I work in the City of St. Louis, Missouri, and I am employed by Union Electric Company d/b/a AmerenUE as Vice President of Regulatory & Lag Affairs.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Union Electric Company d/b/a AmerenUE consisting of 42 pages and Schedules SMK-ER 2 through SMK-ER 6, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.



Stephen M. Kidwell

Subscribed and sworn to before me this 11th day of February, 2010.



Notary Public

My commission expires:

Debby Anzalone - Notary Public
Notary Seal, State of
Missouri - St. Louis County
Commission #06435722
My Commission Expires 5/4/2010