

Exhibit No.:

Issue(s):

Witness/Type of Exhibit:

Sponsoring Party:

Case No.:

Taum Sauk/
DSM Cost Recovery/
Kind/Surrebuttal
Public Counsel
ER-2011-0028

SURREBUTTAL TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

AMEREN MISSOURI

Case No. ER-2011-0028

April 15, 2011

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

In the Matter of Union Electric Company)
d/b/a AmerenUE's Tariff to Increase Its)
Annual Revenues for Electric Service) Case No. ER-2011-0028

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

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

1. My name is Ryan Kind. I am a Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my **surrebuttal** 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 15th day of April 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.

SURREBUTTAL TESTIMONY

OF

RYAN KIND

UNION ELECTRIC COMPANY

D/B/A AMEREN MISSOURI

CASE NO. ER-2011-0036

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

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

4 **Q. ARE YOU THE SAME RYAN KIND THAT HAS PREVIOUSLY FILED REBUTTAL TESTIMONY**
5 **IN THIS CASE AND ALSO DIRECT TESTIMONY IN THIS CASE REGARDING BOTH REVENUE**
6 **REQUIREMENT ISSUES AND CLASS COST OF SERVICE (CCOS) AND RATE DESIGN**
7 **ISSUES?**

8 A. Yes.

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. The purpose of this testimony is to address the direct testimony of the Union Electric
11 Company (UE or the Company) regarding the issues of (1) Taum Sauk cost recovery and
12 (2) cost recovery and future expenditure levels for demand-side management (DSM)
13 programs.

14 **Q. WHAT IS YOUR RESPONSE TO THE REBUTTAL TESTIMONY OF UE WITNESS MARK BIRK**
15 **REGARDING THE TAUM SAUK ISSUE?**

Surrebuttal Testimony of
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1 A. Mr. Birk responded to my direct testimony on the Taum Sauk cost recovery issue on
2 pages 26 – 28 of his rebuttal testimony. At line 10 on page 27, the following question
3 appears in Mr. Birk’s testimony:

4 Q. Mr. Kind appears to believe that all of the rebuilding efforts were
5 the bare minimum required by regulatory agencies, and were not actually
6 “enhancements.” Is this true?

7 Mr. Birk’s answer to this question is “no”. His answer appears to be saying that it is not
8 correct for Mr. Kind to have the belief that the rebuilt Taum Sauk upper reservoir did not
9 include any enhancements. It’s not clear what part of my direct testimony Mr. Birk is
10 responding to here because the word “enhancements” does not appear anywhere in my
11 direct testimony nor does the phrase “bare minimum required.”

12 **Q. DID YOU ADDRESS THE SUBJECT OF TAUM SAUK “ENHANCEMENTS” IN YOUR**
13 **REBUTTAL TESTIMONY ON THE TAUM SAUK COST RECOVERY ISSUE?**

14 A. Yes. The subject of “enhancements” is addressed in my rebuttal testimony at the bottom
15 of page 6 where the following question and answer appear:

16 Q. On pages 32 and 33 of his testimony, Mr. Birk describes several
17 “enhancements” that cost “approximately \$67 million.” Does Public
18 Counsel believe UE should be allowed to recover any of these costs in
19 rates?

20 A. No. There is no evidence that any of these costs would have
21 occurred absent the catastrophic failure of the upper reservoir that
22 resulted from UE’s errors in judgment.

23 **Q. DID MR. BIRK PROVIDE ANY EVIDENCE IN HIS REBUTTAL TESTIMONY TO SHOW THAT**
24 **COST RECOVERY FOR TAUM SAUK ENHANCEMENTS WOULD HAVE BEEN AN ISSUE IN THIS**
25 **CASE ABSENT THE TAUM SAUK DISASTER THAT OCCURRED BECAUSE OF UE’S ERRORS IN**
26 **JUDGMENT?**

27 A. No.

1 **Q. THE NOVEMBER 2007 CONSENT AGREEMENT BETWEEN THE STATE OF MISSOURI**
2 **AND UE INCLUDES THE TERM “ALLOWED COSTS.” HOW DOES MR. BIRK REFER TO**
3 **THIS TERM IN HIS REBUTTAL TESTIMONY?**

4 A. As I noted in my direct testimony, “Mr. Birk appears to be trying to get as much mileage
5 as possible out of the term ‘allowed costs’...”. He refers to this term again in his rebuttal
6 testimony on page 28 where he states:

7 Ameren Missouri has proposed to include in rate base only
8 approximately \$90 million of the approximately \$489 million in total
9 construction costs for the new upper reservoir, all of which are allowed
10 costs under the settlement.

11 Of course, contrary to the one possible interpretation of the above statement, there is no
12 settlement that has been approved by this Commission that would allow UE to recover
13 these costs. To the contrary, there is only a November 2007 Consent Agreement between
14 the State of Missouri and UE which allows UE to seek future cost recovery of a category
15 of costs which are referred to by the misleading name “allowed costs” in the consent
16 agreement.

17 **Q. DOES UE WITNESS MARK BIRK’S REBUTTAL TESTIMONY ADDRESS WHETHER THE**
18 **COMPANY BELIEVES IT HAS LIVED UP TO ITS COMMITMENT FOR “HOLDING**
19 **CUSTOMERS HARMLESS FROM THE ADVERSE IMPACTS OF THE BREACH”?**

20 A. Yes. At line 11 on page 28 of his testimony, Mr. Birk attempts to redefine the hold
21 harmless commitments made by UE in the wake of the Taum Sauk disaster. Mr. Birk has
22 attempted to redefine the Company’s original broad unqualified hold harmless
23 commitment by stating:

24 Ameren Missouri’s commitment was that customers would not bear any
25 of the clean-up costs and damages that Ameren Missouri bore because of
26 the breach; no costs for clean-up, no damages to individuals, no costs and
27 damages to rebuild Johnson Shut-Ins State Park, no monies or

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Ryan Kind

1 consideration paid in the settlement of the state's claims, and no increase
2 in production costs to customers while the plant was out of service.

3 In my direct testimony to which Mr. Birk was responding, I noted on pages 3 and 4 the
4 following broad unqualified commitments that UE has made in the past regarding holding
5 customers harmless from any adverse impacts of the Taum Sauk disaster:

6 The AmerenUE Press Release that was issued when UE filed a new rate
7 case (Case No. ER-2007-0002) on July 7, 2006 included several
8 statements from Ameren President Gary Rainwater including the
9 statement that "Rainwater added that **consistent with the company's**
10 **commitment to accept full responsibility for the effects of the Dec. 14**
11 **failure of its Taum Sauk Plant**, AmerenUE has not included in the rate
12 request filed today the related cost that the company has incurred."
13 [Emphasis added]

14 ...

15 UE's hold harmless commitment also appeared in the Direct Testimony
16 of UE President Warner Baxter in Case No. ER-2007-0002 where he
17 stated on page 34 that "**Consistent with the position that we have**
18 **maintained throughout this period, we are taking full responsibility**
19 **for this matter in our rate filing.**" [Emphasis added]

20 ...

21 UE's commitment to hold customers harmless from any adverse
22 financial impacts from the Taum Sauk disaster was restated in two
23 separate pleadings filed by the Company in Case No. ES-2007-0474. In
24 its June 12, 2007 pleading opposing the Staff's request to investigate the
25 Taum Sauk disaster, the Company stated that "**AmerenUE has already**
26 **accepted full responsibility for the effects of the breach of the Taum**
27 **Sauk reservoir.**" In its November 7, 2007 pleading titled "AmerenUE's
28 Response to Staff's Initial Incident Report," the Company states on page
29 8 that "**Ameren has already committed to protecting its customers**
30 **from bearing the costs of the Taum Sauk failure.**" [Emphasis added]

31 **Q. HOW DOES MR. BIRK'S NEW NARROW DEFINITION OF UE'S HOLD HARMLESS**
32 **COMMITMENT COMPARE TO THE HOLD HARMLESS COMMITMENT STATEMENTS QUOTED**
33 **IN YOUR PREVIOUS ANSWER THAT WERE MADE BY THE COMPANY IN THE FIRST**
34 **COUPLE OF YEARS FOLLOWING THE DECEMBER 14, 2005 DISASTER AT THE TAUM**
35 **SAUK FACILITY?**

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1 A. Mr. Birk’s new narrow interpretation of the hold harmless commitment is vastly different
2 from the hold harmless commitment statements that UE executives made to the public
3 and this Commission as part of a public relations initiative to respond to the deep
4 concerns about UE’s competency after details began emerging about the massive
5 property damage, the terrifying near fatal emergency for the park ranger and his family,
6 and the profit motives and errors in judgment that led to the disaster. Notably, Mr. Birk’s
7 rebuttal testimony does not provide any evidence to support his new narrow interpretation
8 of the Company’s hold harmless commitment. Nor does Mr. Birk attempt to reconcile the
9 evidence in my direct testimony regarding actual hold harmless commitment statements
10 made by UE executives with his new narrow and limited view of the hold harmless
11 commitment.

12 **Q. DO YOU BELIEVE THAT THE RECOVERY OF TAUM SAUK REBUILDING COSTS WOULD BE**
13 **AN ISSUE BEFORE THE COMMISSION IN THIS CASE IF UE HAD TRULY FULFILLED ITS**
14 **STATED COMMITMENTS TO HOLD OTHERS HARMLESS THAT YOU REFERENCED ABOVE**
15 **FROM YOUR DIRECT TESTIMONY?**

16 A. No. If UE had followed through on its commitment to “protecting its customers from
17 bearing the costs of the Taum Sauk failure,” then the recovery of Taum Sauk re-building
18 costs would not be part of this case. The recovery of Taum Sauk rebuilding costs is an
19 issue in this case because UE is seeking to have ratepayers bear a portion of the costs of
20 the Taum Sauk disaster in order to shift a portion of this burden from shareholders to
21 ratepayers. As I have stated previously, there is absolutely no evidence to indicate that
22 UE’s efforts to increase rates in this case so that customers will pay for additional capital
23 costs related to the Taum Sauk generating facility would have occurred absent the Taum
24 Sauk disaster. Therefore, the Commission should reject UE’s attempt to redefine its hold
25 harmless commitment and its attempt to harm customers by seeking to have them bear a

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1 portion of the Company's Taum Sauk re-building costs that are solely attributable to its
2 failure to prudently maintain and operate Taum Sauk.

3 **Q. PLEASE IDENTIFY THE REBUTTAL TESTIMONY OF UE WITNESSES THAT YOU WILL**
4 **ADDRESS REGARDING THE DEMAND-SIDE MANAGEMENT (DSM) ISSUE?**

5 A. I will address the rebuttal testimony of UE witnesses William Davis and Richard Mark.

6 **Q. WHAT ARE YOUR REMARKS REGARDING THE REBUTTAL TESTIMONY OF UE WITNESS**
7 **RICHARD MARK?**

8 A. I will begin with Mr. Mark's interpretation of the Missouri Energy Efficiency Investment
9 Act ("MEEIA") that begins on page 2 of his testimony. Mr. Mark emphasizes certain
10 portions of MEEIA that address the interest of the Company in timely cost recovery, but
11 he fails to note that the provisions in MEEIA pertaining to timely cost recovery are part
12 of a comprehensive approach to policy on energy efficiency that has been set by the
13 Missouri Legislature in this new statute. The other parts of this comprehensive policy are
14 the requirements in the act that:

- 15 • Demand-side programs must be designed and implemented with the goal of
16 achieving all cost-effective demand-side savings; and
- 17 • Demand-side programs must be approved by the Commission.

18 In addition to not addressing these other crucial components of the comprehensive
19 approach to implementing the state's policy to "value demand-side investments equal to
20 traditional investments in supply and delivery infrastructure" Mr. Mark does not
21 adequately address the requirement that energy efficiency savings be "measureable and
22 verifiable."

1 **Q. HOW DOES THE FAILURE OF UE WITNESS RICHARD MARK TO COMPREHENSIVELY**
2 **ADDRESS THE KEY INTER-RELATED ELEMENTS OF MEEIA AFFECT THE**
3 **REASONABLENESS AND VIABILITY OF THE DSM COST RECOVERY APPROACH THAT**
4 **UE PRESENTS IN THE REBUTTAL TESTIMONIES OF RICHARD MARK AND WILLIAM**
5 **DAVIS?**

6 A. The lost revenue cost recovery and shortened amortization period for DSM investments
7 (from six years to three years) supported by Mr. Mark and Mr. Davis could only be
8 considered if they were part of a comprehensive proposal that addressed all three of the
9 major elements of MEEIA (timely cost recovery, plans to achieve all cost-effective DSM,
10 and DSM program approval.)

11 **Q. MR. MARK STATES ON PAGE 7 OF HIS TESTIMONY THAT UNDER THE COMPANY’S**
12 **PROPOSAL, UE “WOULD CONTINUE TO SPEND AROUND \$25 MILLION PER YEAR ON ITS**
13 **ENERGY EFFICIENCY PROGRAMS.” IS THIS EXPENDITURE LEVEL HIGH ENOUGH FOR**
14 **UE TO ACHIEVE ALL COST-EFFECTIVE DEMAND-SIDE SAVINGS AS REQUIRED BY**
15 **MEEIA?**

16 A. No, DSM expenditures at this level will not come anywhere close to achieving the
17 realistic achievable potential (RAP) level of demand and energy savings for UE.

18 **Q. DOES UE’S PROPOSAL INCLUDE A REQUEST THAT ITS DSM PROGRAMS BE**
19 **EXPLICITLY APPROVED BY THE COMMISSION AS REQUIRED BY MEEIA?**

20 A. No.

1 **Q. YOU ALSO STATED THAT UE’S PROPOSAL DOES NOT ADDRESS THE MEEIA**
2 **REQUIREMENT THAT ENERGY EFFICIENCY SAVINGS BE “MEASUREABLE AND**
3 **VERIFIABLE.” PLEASE EXPLAIN THIS DEFICIENCY.**

4 A. The Commission’s rules to implement MEEIA include important provisions for an
5 independent outside evaluator, not hired by the utility, to “audit and report on the work of
6 each utility’s independent EM&V contractor.” This provision is part of the section (7) of
7 4 CSR 240-20.093 of the Commission’s proposed MEEIA rules that state:

8 (7) Evaluation, Measurement, and Verification (EM&V) of the Process
9 and Impact of Demand-Side Programs. Each electric utility shall hire an
10 independent contractor to perform and report EM&V of each
11 commission-approved demand-side program in accordance with 4 CSR
12 240-20.094 Demand-Side Programs. **The commission shall hire an**
13 **independent contractor to audit and report on the work of each**
14 **utility’s independent EM&V contractor. [Emphasis added.]**

15 (A) Each utility’s EM&V budget shall not exceed five percent (5%) of
16 the utility’s total budget for all approved demand-side program costs.

17 (B) The cost of the commission’s EM&V contractor shall—

- 18 1. Not be a part of the utility’s budget for demand-side programs; and
19 2. Be included in the Missouri Public Service Commission Assessment
20 for each utility.

21 (C) EM&V draft reports from the utility’s contractor for each approved
22 demand-side program shall be delivered simultaneously to the utility and
23 to parties of the case in which the demand-side program was approved.

24 (D) EM&V final reports from the utility’s contractor of each approved
25 demand-side program shall—

- 26 1. Be completed by the EM&V contractor on a schedule approved by the
27 commission at the time of demand-side program approval in accordance
28 with 4 CSR 240-20.094(3); and
29 2. Be filed with the commission and delivered simultaneously to the
30 utility and the parties of the case in which the demand-side program was
31 approved.

32 (E) Electric utility’s EM&V contractors shall use, if available, a
33 commission approved statewide technical resource manual when
34 performing EM&V work.

1 **Q. PLEASE SUMMARIZE PUBLIC COUNSEL’S VIEW OF UE’S PROPOSAL IN THE REBUTTAL**
2 **TESTIMONIES OF MR. MARK AND MR. DAVIS FOR DSM COST RECOVERY AND**
3 **EXPENDITURE LEVELS.**

4 A. It is inappropriate and unreasonable for UE to just pick out the timely cost recovery
5 portion of MEEIA that benefits the Company and its shareholders, while ignoring the
6 other important elements of MEEIA that are intended to benefit and protect customers.
7 As described in my answers above, these other important elements are:

- 8 • Demand-side programs must be designed and implemented with the goal of
9 achieving all cost-effective demand-side savings;
- 10 • Demand-side programs must be approved by the Commission;
- 11 • The demand and energy savings resulting from DSM programs must be verifiable
12 and this requires independent oversight of the utility’s evaluation efforts by an
13 outside contractor who is not hired by the utility.

14 **Q. PLEASE DESCRIBE THE PROPOSAL IN THE REBUTTAL TESTIMONY OF UE WITNESS**
15 **WILLIAM DAVIS TO ADDRESS THE “THROUGHPUT DISINCENTIVE”.**

16 A. In his testimony, Mr. Davis recommends a decrease to the billing units used to set rates in
17 this case. Billing units would be reduced by an amount to reflect the load reductions that
18 are estimated by Mr. Davis to result from UE spending about \$25 million annually on
19 DSM programs. The impact of the reduced billing units would be to increase the rates
20 that result from this case for most customer classes

21 **Q. IS THE MAGNITUDE OF THESE PREDICTED FUTURE LOAD REDUCTIONS KNOWN AND**
22 **MEASUREABLE AT THIS TIME?**

1 A. No.

2 **Q. DO THE BILLING UNIT ADJUSTMENTS FOR ANTICIPATED FUTURE IMPACTS OF DSM**
3 **PROGRAMS ATTEMPT TO ADJUST FOR LOAD REDUCTIONS BEYOND THE END OF THE**
4 **TRUE UP PERIOD IN THIS CASE?**

5 A. Yes

6 **Q. IS MAKING ADJUSTMENTS TO BILLING UNITS FOR LOAD REDUCTIONS ANTICIPATED TO**
7 **OCCUR BEYOND THE TRUE UP PERIOD CONSISTENT WITH HOW RATEMAKING**
8 **NORMALLY OCCURS IN MISSOURI?**

9 A. No, I am not aware of the Commission approving this type of ratemaking treatment in the
10 past for DSM program expenditures. Legal counsel advises me that departing from using
11 the known and measureable standard and historical test year (with true-up) approach in
12 Missouri may not be consistent with Missouri law. In addition, the Company appears to
13 be proposing adjustments to billing units for changes in customer usage that are predicted
14 to occur after the true-up cut-off dates that were agreed upon by the parties in this case.

15 **Q. HOW DOES UE'S PROPOSAL IN THE REBUTTAL TESTIMONIES OF MR. MARK AND MR.**
16 **DAVIS FOR DSM COST RECOVERY AND EXPENDITURE LEVELS RELATE TO THE DSM**
17 **ISSUES THAT WERE RECENTLY DECIDED BY THE COMMISSION IN CASE NO. ER-2010-**
18 **0355?**

19 A. Similar issues arose in the current KCPL rate case (Case No. ER-2110-0355) regarding
20 DSM cost recovery and expenditure levels. The Commission issued its Report and Order
21 in the KCPL rate case on April 12, 2011. The Commission's decision on Demand-Side
22 Management issues included this general guidance on page 91 of the Order:

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1 The Commission concludes that the continuance of the DSM programs is
2 in the public interest as shown by the customer participation and clear
3 policies of this state to encourage DSM programs. In the absence of a
4 clear proposal for a cost recovery mechanism and during the gap
5 between the end of the true-up for this case and the implementation of a
6 program under MEEIA, the Commission concludes that the Companies
7 should continue to fund and promote or implement, the DSM programs
8 in the 2005 Agreement (KCP&L only), and in its last adopted preferred
9 resource plan (both KCP&L and GMO). In addition, the Commission
10 directs that those costs be placed in a regulatory asset account and be
11 given the treatment as further described below.

12 The above paragraph reflects the program selection and expenditure level decision made
13 by the Commission. The Commission's decision on the DSM ratemaking treatment
14 applicable to future DSM investments appears on page 93 of the Order where the
15 Commission stated:

16 The Commission...will direct that DSM program costs for
17 investments made from December 31, 2010, until a future recovery
18 mechanism is in place shall be placed in a regulatory asset account
19 and amortized over six years with a carrying cost equal to the
20 AFUDC rate applied to the unamortized balance.

21 The Commission noted that:

22 This would reduce the disincentive for the companies to have these
23 programs and allow the companies to recover their DSM program
24 costs in a timeframe closer to when they occurred. **This also makes**
25 **the treatment of these future costs similar to those of Ameren**
26 **Missouri in ER-2010-0036. [Emphasis added.]**

27 **Q. DO YOU BELIEVE THAT THE COMMISSION SHOULD DIRECT TREATMENT OF FUTURE**
28 **DSM PROGRAM COSTS IN THIS CASE IN A MANNER SIMILAR TO THE TREATMENT OF**
29 **FUTURE COSTS THAT THE COMMISSION DETERMINED WAS APPROPRIATE IN THE**
30 **KCPL RATE CASE?**

31 A. Yes, I believe that the current ratemaking treatment for UE, including the six year
32 amortization period should be continued to maintain consistency between the ratemaking
33 treatments for DSM cost recovery that are applied to KCPL and UE.

1 **Q. ARE THERE ANY OTHER FACTORS THAT THE COMMISSION SHOULD CONSIDER IN**
2 **MAINTAINING CONSISTENCY BETWEEN THE DSM EXPENDITURE LEVELS AND COST**
3 **RECOVERY TREATMENT FOR UE AND KCPL?**

4 A. Yes, when the Commission considers how to determine an appropriate level of DSM
5 expenditures for UE until it has another rate case or until a new cost recovery treatment is
6 put in place pursuant to MEEIA and the Commission's rules pertaining to MEEIA, the
7 relative size of UE and KCPL should be taken into account. Since UE is much larger than
8 KCPL in terms of the number of customers served and the size of the customer loads that
9 are served, UE should be expected to have a substantially higher level of annual DSM
10 expenditures than KCPL, assuming similar ratemaking treatment for both utilities.

11 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

12 A. Yes.