

Exhibit No.:

Issue(s):

Witness/Type of Exhibit:

Sponsoring Party:

Case No.:

\_\_\_\_\_  
Taum Sauk/  
Fuel Adjustment Clause/  
DSM Cost Recovery/  
Rate Design  
Kind/Rebuttal  
Public Counsel  
ER-2011-0028

## **REBUTTAL TESTIMONY**

**OF**

**RYAN KIND**

Submitted on Behalf of  
the Office of the Public Counsel

**UNION ELECTRIC COMPANY D/B/A AMERENUE**

**Case No. ER-2011-0028**

March 25, 2011



**REBUTTAL TESTIMONY**  
**OF**  
**RYAN KIND**  
**UNION ELECTRIC COMPANY**  
**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 DIRECT TESTIMONY IN**  
5       **THIS CASE REGARDING BOTH REVENUE REQUIREMENT ISSUES AND CLASS COST OF**  
6       **SERVICE (CCOS) AND RATE DESIGN ISSUES?**

7       A.     Yes.

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

9       A.     The purpose of this testimony is to address the direct testimony of the Union Electric  
10       Company (UE or the Company) and the Commission Staff (Staff) regarding the issues of  
11       Taum Sauk, the Fuel Adjustment Charge, and cost recovery for demand-side  
12       management (DSM) programs.

13       **Q.     PLEASE IDENTIFY THE DIRECT TESTIMONY OF UE AND STAFF WITNESSES THAT YOU**  
14       **WILL ADDRESS REGARDING THE TAUM SAUK ISSUE?**

15       A.     I will address the direct testimony of UE witnesses Mark Birk and Paul Rizzo and Staff  
16       witnesses Lisa Ferguson and Lisa Hanneken.

1       **Q.     WHAT IS YOUR RESPONSE TO THE TESTIMONY OF UE WITNESSES MARK BIRK AND**  
2       **PAUL RIZZO?**

3       A.     I will begin by responding to the direct testimony of Mark Birk. Mr. Birk notes on page  
4       24 of his testimony that “the release of the water destroyed a private residence...” I was  
5       struck by the fact that Mr. Birk did not note that this residence was occupied by a  
6       Missouri Park Ranger and his family at the time their house was destroyed and that only a  
7       near miracle prevented this family from being killed in the deluge that they were swept  
8       away in. Of course if the flooding of the Johnson Shut-Ins State Park campground had  
9       occurred in the summer when it was full, an unimaginable scenario of death and  
10      destruction could have easily unfolded in the state park. At the time of the incident, UE’s  
11      management stated publicly that the disaster was a humbling experience for them.

12      When Mr. Birk addresses the causes of the catastrophic failure of the upper reservoir, he  
13      focuses on “unintentional over-pumping of the reservoir, due to problems with the level  
14      control instrumentation.” Mr. Birk makes no mention of the many errors in judgement  
15      that led to UE’s inability to have the safeguards in place to prevent this “unintentional  
16      overpumping.” For example, investigations and reports of the disaster have noted many  
17      factors within UE’s control that should have been addressed to prevent the incident from  
18      ever happening. These factors include:

- 19             • UE’s failure to adequately respond to the “Niagara falls” incident on September  
20             25, 2005 and failure to report this to FERC until after the reservoir failure;
- 21             • UE’s failure to address the detachment of the gauge piping anchoring system in a  
22             timely manner and failure to report this detachment to FERC until after the  
23             reservoir failure;

- 1                   • UE’s failure to properly install and maintain the Warrick probes that were  
2                   intended to provide backup protection from overtopping.

3                   Someone reading Mr. Birk’s testimony might surmise that UE had no reason to believe  
4                   that there were “problems with the level control instrumentation” prior to the occurrence  
5                   of the Taum Sauk disaster. However, nothing could be further from the truth.

6                   Mr. Birk discusses the Forensic Investigation Report performed by the UE consultant,  
7                   Paul Rizzo, who is also a witness for the Company in this case. As he discusses this  
8                   report on pages 26 and 27 of his direct testimony, he appears to be implying that UE was  
9                   not really at fault for the disaster when he states that “however, as noted, none of these  
10                  contributing causes would have led to the stability failure of the dike.” The FERC Office  
11                  of Enforcement (FERC OE) took a different view of how UE’s actions (and lack of  
12                  actions) contributed to the disaster. The FERC OE outlined its views in paragraphs 21  
13                  through 26 in the Stipulation and Consent Agreement in FERC Project No. 2277 wherein  
14                  UE agreed to pay one of the largest fines ever to the FERC. Paragraphs 21 through 26  
15                  contained the following FERC OE allegations:

16                               21. The breach of the upper reservoir of the Taum Sauk Project may have  
17                               been prevented if AmerenUE had reported conditions affecting the safety  
18                               of the project to the Commission, allowing Commission staff to require  
19                               AmerenUE to take steps that may have prevented the failure of the upper  
20                               reservoir, or if Ameren had used sound and prudent engineering practices  
21                               by operating the upper reservoir at a safe water elevation and properly  
22                               repairing and maintaining critical instrumentation. OE’s specific  
23                               allegations of violations of the Commission’s rules and regulations and  
24                               Ameren’s license conditions are set forth below.

25                               22. AmerenUE violated Section 12.10(a) of the Commission’s  
26                               regulations, which requires licensees to report to the Regional Engineer  
27                               any condition affecting the safety of a project or project works, when it:  
28                               (a) failed to report the September 25, 2005 overtopping to the  
29                               Commission; (b) failed to report the unusual instrumentation readings it  
30                               observed on September 27, 2005, to the Commission; and (c) failed to  
31                               report the failed system for anchoring the transducers used to measure  
32                               the water level in the upper reservoir to the Commission.

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1 23. AmerenUE violated Section 12.5 of the Commission's regulations,  
2 which provides that a licensee must use sound and prudent engineering  
3 practices in any action relating to the design, construction, operation,  
4 maintenance, use, repair or modification of a water power project or  
5 project works, when it: (a) added 0.4 foot to the programmable logic  
6 controllers' measurement of the project's water level to compensate for  
7 an inaccurate transducer reading; (b) did not repair the loose transducers  
8 used to measure the water level in the upper reservoir; (c) operated the  
9 Taum Sauk Project with water at 1596 feet above sea level, too close to  
10 the top of the upper reservoir's parapet wall; (d) raised the upper  
11 reservoir's Warrick probes to 1597.4 feet and 1597.7 feet above sea level,  
12 higher than the lowest point of the top of the parapet wall; (e) added a  
13 one-minute delay after the Warrick probes were activated before the  
14 pumps were shut off; (f) programmed the Hi and Hi-Hi Warrick  
15 emergency cutoff probes to operate in series rather than in parallel mode;  
16 and (g) did not program the Warrick probe to transmit an alarm when the  
17 Hi probe was activated.

18 24. AmerenUE violated Section 12.1 1 of the Commission's regulations,  
19 which provides that a licensee must report any modification of the  
20 project to the Commission, when it failed to report to the Commission  
21 that it raised the Warrick probes.

22 25. AmerenUE violated Article 20 of license Form L-1 1 for the Taum  
23 Sauk Project, which requires advance Commission approval of  
24 modifications of the project's instrumentation, when it: (a) raised the  
25 Warrick probes to 1597.4 feet and 1597.7 feet above sea level without  
26 prior Commission approval; (b) added a one-minute delay to the  
27 activation of the Warrick probes without prior Commission approval;  
28 and (c) programmed the Hi and Hi-Hi Warrick emergency shutoff probes  
29 to operate in series without prior Commission approval.

30 26. AmerenUE violated Article 27 of the license for the Taum Sauk  
31 Project, which requires Commission approval of a substantial alteration  
32 of the project, when it raised the Warrick probes without prior  
33 Commission approval.

34 Mr. Birk makes no mention of the FERC allegations or the multi-million dollar fine that  
35 UE paid to FERC in response to these allegations.

36 **Q. DOES MR. BIRK ADDRESS UE'S ACTIONS THAT WERE TAKEN IN ORDER TO COMPLY**  
37 **WITH THE TERMS OF THE STIPULATION AND CONSENT AGREEMENT IN FERC**  
38 **PROJECT NO. 2277?**

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1 A. He addresses some of these terms indirectly on page 27 of his direct testimony where he  
2 states that “AmerenUE took a number actions in response to these investigatory findings”  
3 in the Mr. Rizzo’s Forensic Investigation Report. While Mr. Birk lists many of the  
4 actions that UE was required to take under the terms of the Stipulation and Consent  
5 Agreement in FERC Project No. 2277, he makes no mention of this Stipulation that led to  
6 the requirement for UE to take these actions and appears to imply that UE has voluntarily  
7 undertaken these actions instead of taking these actions in response to FERC enforcement  
8 efforts.

9 **Q. AT LINE 22 ON PAGE 31 OF HIS TESTIMONY, MR. BIRK REFERS TO “ALLOWED**  
10 **COSTS”. HAS THE COMMISSION MADE ANY DETERMINATIONS PRIOR TO THIS CASE**  
11 **ABOUT WHAT TYPES OR CATEGORIES OF TAUM SAUK RE-BUILDING COSTS WOULD BE**  
12 **ALLOWED FOR RECOVERY IN RATES FROM UE’S CUSTOMERS?**

13 A. No.

14 **Q. WHERE DOES THE TERM “ALLOWED COSTS” COME FROM?**

15 A. This term appears in the November 2007 Consent Agreement between the State of  
16 Missouri and UE. The Commission was not a party to this agreement. In the context of  
17 the agreement, “allowed costs” are those categories of costs for which UE is not  
18 prohibited from seeking future cost recovery. The term should not be construed to mean  
19 costs that UE will be allowed to recover, but merely those costs which UE is permitted to  
20 seek cost recovery from the Commission pursuant to the Consent Agreement.

21 In my direct testimony, I noted that in a November 7, 2007 pleading titled “AmerenUE’s  
22 Response to Staff’s Initial Incident Report” in Case No. ES-2007-0474, UE stated on  
23 page 8 that “Ameren has already committed to protecting its customers from bearing the

1 costs of the Taum Sauk failure.” Twenty days after UE submitted this pleading to the  
2 Commission, the Company signed the November 2007 Consent agreement containing  
3 language that referred to the “allowed costs” that it could seek to recover from customers  
4 for the re-building of the Taum Sauk upper reservoir.

5 **Q. DOES UE WITNESS MARK BIRK USE THE TERM “ALLOWED COSTS” WHEN HE**  
6 **DESCRIBES UE’S RATE REQUEST FOR TAUM SAUK RE-BUILDING COSTS?**

7 A. Yes. At the top of page 32, Mr. Birk appears to be trying to get as much mileage as  
8 possible out of the term “allowed costs” when he states that:

9 AmerenUE has included in rate base approximately \$92 million of the  
10 approximately \$491 million in total construction costs for the new upper  
11 reservoir, all of which are **allowed costs** under the Consent Judgment.  
12 [Emphasis added]

13 As stated previously, the Commission has not yet made any determinations about what  
14 Taum Sauk rebuilding costs, if any, that UE should be allowed to recover from  
15 ratepayers. I see Mr. Birk’s support of the request to recover \$92 million dollars in Taum  
16 Sauk re-building costs as a sign that UE’s upper management has fully recovered from  
17 the humbling experience of a disaster caused by a number of their errors in judgment that  
18 could have resulted in a massive loss of life if it had occurred during peak camping  
19 season.

20 **Q. ON PAGES 32 AND 33 OF HIS TESTIMONY, MR. BIRK DESCRIBES SEVERAL**  
21 **“ENHANCEMENTS” THAT COST “APPROXIMATELY \$67 MILLION.” DOES PUBLIC**  
22 **COUNSEL BELIEVE UE SHOULD BE ALLOWED TO RECOVER ANY OF THESE COSTS IN**  
23 **RATES?**

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



1 **Q. DOES THE CONSENT AGREEMENT DEFINE “ENHANCEMENTS”?**

2 A. No.

3 **Q. ON PAGE 35 OF HIS TESTIMONY, MR. BIRK DESCRIBES THE “ENHANCED**  
4 **FOUNDATION” THAT COST “APPROXIMATELY \$127 MILLION. DOES PUBLIC COUNSEL**  
5 **BELIEVE UE SHOULD BE ALLOWED TO RECOVER ANY OF THIS COST IN RATES?**

6 A. No. There is no evidence that any of this cost would have occurred absent the  
7 catastrophic failure of the upper reservoir that resulted from UE’s errors in judgment.

8 **Q. ON PAGE 37 OF HIS DIRECT TESTIMONY, UE WITNESS MARK BIRK ASSERTS THAT**  
9 **“ESSENTIALLY ALL OF THE COSTS THAT [UE] INCURRED WOULD HAVE BEEN**  
10 **INCURRED EVEN IF THE BREACH HAS NOT OCCURRED.” DO YOU AGREE WITH MR.**  
11 **BIRK’S ASSERTION?**

12 A. No. Mr. Birk’s assertion is pure speculation. We would only know what would have  
13 happened in the absence of the Taum Sauk disaster (1) if it had never occurred or (2) if  
14 there were firm plans in place prior to the disaster to upgrade the Taum Sauk facility in a  
15 manner that included some or all of the upper reservoir re-building activities that have  
16 taken place. There were no firm or even tentative plans to spend money upgrading the  
17 Taum Sauk plant at the time of the disaster in December 2005.

18 UE made an IRP filing in December 2005 that reflected the Company’s plans for the 20  
19 year planning horizon to add, retire, or upgrade generation facilities. There is no mention  
20 in the IRP filing of the need to upgrade the Taum Sauk facility and it was expected to  
21 remain in service providing 440 MWs of generation capacity throughout the 20 year  
22 planning horizon.

1 **Q. WHAT IS YOUR RESPONSE TO THE TESTIMONY OF UE WITNESS PAUL RIZZO?**

2 A. On page 2 of his testimony, Mr. Rizzo states that his testimony:

3 will explain the steps AmerenUE would have been required to take by  
4 the Federal Energy Regulatory Commission (“FERC”) if the December  
5 2005, failure of the Upper Reservoir had not occurred.

6 Mr. Rizzo’s use of the term “would have been required to take by [FERC]” implies that  
7 he can predict these FERC requirements with absolute certainty and I don’t believe his  
8 testimony that follows is able to reach the high bar that he established for himself.

9 **Q. DOES MR RIZZO CONCLUDE THAT FERC INSPECTIONS WOULD HAVE LED TO THE**  
10 **RETIREMENT OF THE TAUM SAUK GENERATING FACILITY?**

11 A. Yes. On page 17 of his testimony, Mr. Rizzo asserts that the original Taum Sauk  
12 generating facility was “near the end of its useful life.” He reaches this conclusion based  
13 on his view that:

14 Even if the 2005 breach had not occurred, in my opinion the facility  
15 would ultimately have been retired as a result of the scheduled 2008  
16 FERC inspection

17 As I stated earlier in this testimony, UE’s 2005 IRP filing indicated that the Company  
18 believed the Taum Sauk facility would be in service for the entire 20 planning horizon. It  
19 appears that UE is making different assessments of the useful life of the former Taum  
20 Sauk facility when it is making a cost recovery request than when it is making a resource  
21 planning filing to assess the need for additional resources.

22 On page 18 of his testimony, Mr. Rizzo states:

23 beginning in 2003 the FERC began applying a much more rigorous dam  
24 safety inspection process that, in the absence of the breach, would have  
25 applied to its next inspection of the Taum Sauk Plant, scheduled for  
26 2008. Specifically, FERC began applying its Potential Failure Modes  
27 Analysis (“PFMA”) Program to dam safety inspections.

1 Surely UE's resource planning experts would have been aware in 2005 of the new 2003  
2 requirements for PFMA analysis and incorporated the implications of this new FERC  
3 inspection process into its resource planning if it was expected to impact (and potentially  
4 require the retirement) one of UE's major generation facilities. However, not only did  
5 UE's 2005 resource filing **not** reflect a shortened life for the Taum Sauk facility, UE's  
6 filing did not even examine the impact of the new FERC inspections as an uncertain  
7 factor that needed to be assessed in the risk analysis portion of its 2005 IRP filing.

8 **Q. WHAT IS THE BASIS FOR UE WITNESS PAUL RIZZO'S CONCLUSION THAT A FERC**  
9 **INSPECTION SCHEDULED FOR 2008 WOULD HAVE LED TO THE RETIREMENT OF THE**  
10 **TAUM SAUK GENERATING FACILITY?**

11 A. On page 19 of his testimony, Mr. Rizzo lists six deficiencies that he believes would have  
12 been identified through the PFMA process (as part of the 2008 FERC inspection) that "in  
13 my opinion, would have required AmerenUE to cease operating the Taum Sauk plant." I  
14 disagree with Mr. Rizzo because many of these concerns would have been identified  
15 earlier by FERC if UE had made a timely report to FERC of (1) the September 25, 2005  
16 "Niagara falls" overtopping incident and (2) the unusual instrumentation readings it  
17 observed on September 27, 2005. If UE had complied with FERC regulations and made  
18 these reports, then these problems would probably been identified and resolved prior to  
19 the 2008 inspection process that is the focus of Mr. Rizzo's testimony.

20 If UE had been complying with FERC reporting regulations, then the upcoming 2008  
21 inspection that Mr. Rizzo predicts would have had such dire consequences could have  
22 had much different outcomes than what is predicted by Mr. Rizzo. Since Mr. Rizzo's  
23 predictions about the consequences of the 2008 inspection is premised upon UE's  
24 irresponsible failure in September 2005 to comply with FERC reporting requirement to  
25 report to the [FERC] Regional Engineer any condition affecting the safety of a project or

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1 project works, I do not find that Mr. Rizzo is making a compelling case for recovery of  
2 Taum Sauk rebuilding costs. He is essentially arguing that since UE failed to comply  
3 with important FERC reporting requirements as problems arose with the Taum Sauk  
4 facility in September of 2005 and problems were not address by FERC at that time, then  
5 these issues would have all been identified as part of the 2008 inspection process and  
6 resolved in the manner that Mr. Rizzo predicts as part of that process.

7 Public Counsel's view is that if UE had complied with FERC reporting requirements as  
8 issues arose in September of 2005, then the FERC would have responded in order to  
9 protect the safety of the public, making it much less likely that the Taum Sauk disaster  
10 would have ever occurred. In that scenario, modifications to the Taum Sauk plant may  
11 have led to cost recovery issues at some point but such issues would have arisen in a  
12 context where UE was complying with FERC regulations instead of the current case  
13 where we are debating cost recovery associated with a catastrophic failure of the upper  
14 reservoir that would have been much less likely to ever occur if UE had complied with  
15 basic FERC reporting requirements.

16 **Q. DO YOU BELIEVE UE'S POSITION IN THIS CASE ON TAUM SAUK COST RECOVERY IS**  
17 **CONSISTENT WITH UE'S PRIOR COMMITMENT TO ACCEPT FULL RESPONSIBILITY FOR**  
18 **THE EFFECTS OF THE DECEMBER 2005 FAILURE OF ITS TAUM SAUK PLANT?**

19 A. No, definitely not. In this case, UE is trying to justify charging ratepayers almost \$100  
20 million for the Taum Sauk rebuild by claiming that a 2008 FERC inspection process  
21 would have led the Company to make massive investments in the Taum Sauk facility in  
22 order to keep operating the facility, even if UE's reckless behavior had not led to the  
23 Taum Sauk disaster. As UE's witnesses assert that these massive expenditures would  
24 have been required in the absence of the disaster, they remained completely silent on the  
25 FERC investigation that found that if UE's had complied with FERC reporting

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1 requirements as the crisis developed in September 2005, this could have averted the  
2 disaster.

3 If UE had complied with reporting requirements and the disaster was averted, the Taum  
4 Sauk cost recovery issues that we would have needed to address at this time, if any,  
5 would have been completely different. Just as it doesn't make any sense to speculate on  
6 what Taum Sauk cost recovery issues may have resulted from the 2008 inspections  
7 process if the Taum Sauk facility remained intact despite UE's reckless behavior, it  
8 would not make any sense to speculate on what Taum Sauk cost recovery issues may  
9 have arisen if UE had complied with FERC reporting requirements as the crisis  
10 developed in September 2005. UE's request for Taum Sauk rebuilding costs is not  
11 consistent with the Company's pledges (1) to accept full responsibility for the effects of  
12 the December 2005 failure of its Taum Sauk Plant and (2) to protect its customers from  
13 bearing the costs of the Taum Sauk failure.

14 **Q. WHAT IS YOUR RESPONSE TO THE TESTIMONY OF STAFF WITNESSES LISA FERGUSON**  
15 **AND LISA HANNEKEN?**

16 A. Both of these Staff witnesses filed testimony (as part of the Staff Report, Revenue  
17 Requirement Cost of Service). Ms. Ferguson sponsors Staff adjustment P-95 to include  
18 \$98,233,000 in plant additions related to the re-build of the Taum Sauk generating  
19 facility. This adjustment appears on page 16 in Staff Accounting Schedule 4 that was part  
20 of the Staff Accounting Schedules filed with Staff's direct testimony. On page 102 of the  
21 Staff Report, Revenue Requirement Cost of Service, Ms. Hanneken states that Staff has  
22 had problems obtaining a response to one of its Data Requests (DR No. 374) and that  
23 "Staff plans to review this and any other information...in order to determine whether any  
24 further adjustments to the cost of service are necessary to address any capitalized  
25 amounts related to the Taum Sauk reservoir failure."

1       **Q.     DID YOU EXPECT TO SEE THE STAFF INCLUDE SUBSTANTIAL PLANT ADDITIONS**  
2       **RELATED TO THE RE-BUILD OF THE TAUM SAUK GENERATING FACILITY?**

3       A.     No, I was surprised to see this included in the staff cost of service calculations because of  
4       the position that the Staff had expressed previously regarding Taum Sauk re-building  
5       costs in Case No. ES-2007-0474.

6       **Q.     PLEASE EXPLAIN.**

7       A.     In Case No. ES-2007-0474, the Staff concluded in the “Staff’s Initial Incident Report”  
8       dated October 24, 2007 that UE’s conduct that led to the catastrophic failure of the upper  
9       reservoir of the Taum Sauk plant was both “imprudent” and “reckless.” This same Staff  
10      report addresses future cost recovery of any rebuilding costs in recommendation number  
11      one on page 82 of the report where the Staff stated:

12                     That any and all costs, direct and indirect, associated with the Taum Sauk  
13                     incident be excluded from rates on an ongoing basis. **This includes, but**  
14                     **is not limited to, the exclusion of rebuilding costs** and treating the  
15                     facility as though its capacity is available for dispatch modeling.  
16                     [Emphasis added]

17      I did not expect the Staff to include Taum Sauk re-building costs in its cost of service  
18      calculations in this case because the Staff had made a very clear and definite statement in  
19      Case No. ES-2007-0474 that all such costs should be excluded. However, I would note  
20      that the Ms. Hanneken’s statement that “Staff plans to review this and any other  
21      information...in order to determine whether any further adjustments to the cost of service  
22      are necessary to address any capitalized amounts related to the Taum Sauk reservoir  
23      failure” appears to indicate that the Staff had not yet reached a final position on the  
24      amount of Taum Sauk rebuilding cost, if any, that should be reflected in UE’s cost of  
25      service.

1 **Q. LET'S TURN NOW TO THE FUEL ADJUSTMENT CHARGE (FAC) ISSUE. PLEASE**  
2 **IDENTIFY THE DIRECT TESTIMONY OF UE AND STAFF WITNESSES THAT YOU WILL**  
3 **ADDRESS REGARDING THE FAC ISSUE.**

4 A. I will address the direct testimony of UE witness Lynn Barnes and Staff witness Lena  
5 Mantle.

6 **Q. WHAT ARE YOUR REMARKS REGARDING THE DIRECT TESTIMONY OF UE WITNESS**  
7 **LYNN BARNES?**

8 A. There are a couple of areas in the filing requirements for the FAC (4 CSR 240-3.16(3))  
9 that were attached to her testimony that are either incomplete or may need to be updated.  
10 First, the information that UE provided in response to 4 CSR 240-3.16(3)(P) states on  
11 Schedule LMB-E1-12 that:

12 Attachment C to this Schedule lists the supply- and demand-side  
13 resources expected to meet the AmerenUE load requirements for the next  
14 four years (September 2010 to August 2011, and each one-year period  
15 thereafter). The data in the table lists the resource name, ownership,  
16 primary fuel type, heat rate at full load, and projected generation for the  
17 four true-up years.

18 Attachment C does not contain a list of the demand-side resources that UE expects to use  
19 to serve its loads over the next 4 years. Instead of providing the required information  
20 about each of the DSM resources (programs), Attachment C only shows the amount of  
21 MWhs expected from the entire portfolio of DSM programs for each of the next 4 years.  
22 There is no information provided about the specific DSM programs (resources) that are  
23 expected to provide the MWh load reductions shown for each year. There is also no  
24 mention of the demand impacts (MW reductions) from demand response programs that  
25 will UE expects to use to provide service over the next four years. UE has not complied  
26 with this filing requirement since there is insufficient information about the demand-side  
27 resources that UE expects to use to serve its loads over the next 4 years.

1 Second, the information that UE provided in response to 4 CSR 240-3.16(3)(S) states on  
2 Schedule LMB-E1-12 that:

3 The AmerenUE 2009 Environmental Compliance Plan (“ECP”) issued in  
4 July 2009<sup>3</sup> provides the most complete forecast of AmerenUE’s future  
5 environmental investments along with its strategy and plans relating to  
6 its emission allowances. As the ECP indicates, AmerenUE has no plans  
7 to trade (purchase, sell or swap) allowances.

8 While the ECP remains current as of this time, as noted in Ameren’s  
9 most recent 10-Q filing (August 9, 2010), the United States  
10 Environmental Protection Agency (“USEPA”) recently announced the  
11 issuance of a new Clean Air Transport Rule (“CATR”), which could  
12 have a significant impact on environmental investments and the use of  
13 emission allowances. The CATR is currently under evaluation, and the  
14 Company plans to submit comments as part of the rulemaking process to  
15 the USEPA regarding the proposed CATR. As also documented in the  
16 ECP, there are numerous regulations being developed by the USEPA  
17 which also could have a significant impact on future environmental  
18 capital investments which may be required of AmerenUE’s generating  
19 plants. AmerenUE is also evaluating the impact of other regulations  
20 being developed by the USEPA to determine their potential impact on  
21 AmerenUE’s generating plants. It is possible that these potential  
22 regulations could substantially change the investment plans contained in  
23 the July 2009 ECP.

24 The information provided for this item indicates that it is subject to future revisions based  
25 on new rules issues by the EPA and UE has not updated that information to reflect the  
26 new EPA rules so the information is likely to no longer reflect UE’s current forecast of  
27 environmental investments.

28 **Q. WHAT ARE YOUR REMARKS REGARDING THE DIRECT TESTIMONY OF STAFF WITNESS**  
29 **LENA MANTLE?**

30 A. Ms. Mantle provides testimony regarding the FAC at pages 105 – 117 of the Staff Report,  
31 Revenue Requirement Cost of Service. Based on consideration of several factors, Ms.  
32 Mantle recommends changing the sharing percentages in the FAC from 95%:5% to  
33 85%:15% and OPC supports this recommendation.



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1 Public Counsel believes that, from a general perspective, the FAC mechanism currently  
2 in place for UE does not provide sufficient incentive for the Company to minimize UE's  
3 fuel procurement costs and maximize the margins gained from off-system sales (OSS).  
4 OPC believes that, at a maximum, UE should be able to recover 85% of its variations  
5 from the baseline level of fuel costs (net of OSS margins) that was set in the Company's  
6 most recent rate case. Unless UE has at least this much "skin in the game" (i.e. 15%),  
7 ratepayers cannot be assured that UE is making its best efforts to minimize its fuel  
8 procurement costs and maximize its OSS margins. Ratepayer confidence that UE is  
9 making its best efforts to minimize fuel costs is especially important under the current  
10 circumstances where UE's customers are once again faced with the prospect of a double  
11 digit rate increase at the same time many of these same customers are experiencing the  
12 impact of global economic problems on their household budgets.

13 **Q. HAS UE CHANGED ANY OF ITS FUEL PROCUREMENT PRACTICES IN THE LAST YEAR**  
14 **THAT RAISES OPC'S CONCERNS ABOUT UE MAKING ITS BEST EFFORTS TO MINIMIZE**  
15 **FUEL COSTS IF IT DOES NOT HAVE MORE "SKIN IN THE GAME"?**

16 A. Yes. UE has argued in the past that ratepayers could be assured that UE was making its  
17 best efforts to minimize fuel procurement costs because the coal purchases for UE were  
18 "pooled" with the purchases made for UE's merchant generation plants in the Ameren  
19 Genco. This pooling arrangement is no longer in place and OPC believes that a greater  
20 sharing percentage is needed to ensure that UE is adequately incented to minimize its fuel  
21 cost. The same incentive problem can arise in the area of off-system sales since increased  
22 sales by UE can impact the earnings that its unregulated affiliate can make from the  
23 energy and capacity sales of merchant generation plants.

1 **Q. LET'S TURN NOW TO THE DSM COST RECOVERY ISSUE. PLEASE IDENTIFY THE STAFF**  
2 **WITNESS THAT YOU WILL ADDRESS REGARDING THE DSM COST RECOVERY ISSUE.**

3 A. I will address the direct testimony of Staff witness John Rogers.

4 **Q. WHAT ARE YOUR REMARKS REGARDING THE DIRECT TESTIMONY OF STAFF WITNESS**  
5 **JOHN ROGERS?**

6 A. Mr. Rogers recommends that UE's existing deferral mechanism for DSM costs remain in  
7 place at this time and OPC agrees with this recommendation. Public Counsel supports  
8 continuing the six-year amortization period that was approved by the Commission in  
9 UE's prior rate case. At this time, UE plans for future DSM programs are too tentative to  
10 consider departing from the existing cost recovery mechanism. UE's recent IRP filing  
11 suggests that UE has plans to scale back its DSM programs so there is no need to address  
12 any more favorable cost recovery treatment, given UE's current plans.

13 **Q. UE WITNESS WILBON COOPER RECOMMENDS INCREASING THE RESIDENTIAL AND**  
14 **SMALL GENERAL SERVICE SINGLE PHASE SERVICE CUSTOMER CHARGES. DO YOU**  
15 **AGREE WITH HIS PROPOSAL?**

16 A. No. Public Counsel's calculations show that the level of both of these customer charges  
17 already covers the costs that should be recovered through the customer charge. Public  
18 Counsel believes that the residential customer charge should remain at \$8 per month and  
19 the Small General Service customer charge for single phase service should remain at the  
20 current level of \$9.28 per month.

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

22 A. Yes.