BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In re: Union Electric Company's 2008 Utility Resource Filing pursuant to 4 CSR 240 – Chapter 22.	)))	Case No. EO-2007-0409

AMERENUE'S RESPONSE TO REPORTS

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE or the Company), and for its *Response to Reports* filed by the Staff (Staff) of the Missouri Public Service Commission (Commission), the Office of the Public Counsel (OPC), the Missouri Department of Natural Resources (DNR), the Missouri Industrial Energy Consumers (MIEC), the Missouri Energy Group (MEG), Noranda Aluminum, Inc. (Noranda) and the Sierra Club, Missouri Coalition for the Environment, Mid-Missouri Peaceworks and the Association of Community Organizations for Reform Now (collectively, Sierra Club), states as follows:

I. Introduction

1. AmerenUE's Integrated Resource Plan (IRP) filing, which was made on February 5, 2008, was developed after an extensive, unprecedented and participatory stakeholder process. The resulting IRP is a snapshot view of the Company's resource plan at the time the IRP was developed. The Company's resource plan will continue to evolve between now and the Company's next required IRP filing on April 5, 2011.

2. AmerenUE's IRP contains no plans to add any supply-side generation resources at this time. As addressed in detail in Section V.A. of this *Response*, AmerenUE will make no decisions respecting any new supply-side resources until after AmerenUE's next IRP will have been prepared and filed with the Commission.

3. As discussed in Sections II and IV of this *Response*, under the Commission's IRP rules, IRP dockets are not intended to result in a Commission-approved IRP, but rather, are simply a forum by which the Commission and other parties can (a) obtain information about the utility's resource planning processes and the particular IRP which is the subject of the docket; and (b) provide feedback, suggestions, and guidance on how those processes could be changed or improved, which in turn can be taken into account by the utility as it continues to engage in its ongoing resource planning processes and as it develops its next IRP filing.

4. In Reports or Comments (collectively, Reports) filed by the other parties on or about June 18, 2008, the other parties identified 43 alleged deficiencies in AmerenUE's IRP filing: eight identified by Staff, nine identified by DNR, eight identified by OPC, and sixteen identified by the Sierra Club. Of the 43 alleged deficiencies, 31 were completely resolved by the *Joint Filing and Partial Stipulation and Agreement* (Partial Stipulation)[1] filed on August 12, 2008, including all of Staff's. The remainder of the alleged deficiencies are addressed herein.

II. The Applicable Procedure in IRP Dockets

5. 4 CSR 240-22.080(5) –(6) provide that Staff must, and other parties to the docket may, within 120 days of the IRP filing, file a report to identify any deficiencies in the utility's IRP filing.

6. 4 CSR 240-22.080(8) provides for a 45-day process within which parties can seek to reach agreement on resolving alleged deficiencies. If all alleged deficiencies

[1] AmerenUE, Staff, MIEC, MEG, OPC, DNR and the Sierra Club were parties to the Partial Stipulation. While Noranda was not a party, Noranda filed a Response and Statement indicating that it did not oppose the Partial Stipulation.

are resolved, no further filings are necessary.

7. If all alleged deficiencies are not resolved, 4 CSR 240-22.080(9) allows the utility to respond to the reports filed by the other parties, and for the other parties to respond to each other's reports, if desired. After these filings are made, the Commission is to issue an order "which indicates on what items, *if any*, a hearing will be held" (emphasis added). This *Response* is the Company's response to the other parties' *Reports*, and also addresses whether a hearing should be held. As explained below, no hearing is necessary.

8. This *Response* addresses all alleged deficiencies that were not resolved by the *Partial Stipulation*, including some allegations that are not truly deficiencies. As Staff appropriately indicated in its *Report*, not all issues identified in the various reports were truly "deficiencies," with the word "deficiency" meaning an action required by the rule that the electric utility failed to perform. Staff's *Report* labeled non-deficiency items as "concerns." AmerenUE believes this categorization is fair and will use this term when discussing the alleged deficiencies identified by other parties when it believes they are merely concerns and not true deficiencies.

III. AmerenUE's Stakeholder Process

9. Before addressing the alleged deficiencies, it is important for the Commission to have an understanding of the manner in which this IRP was developed and ultimately filed. Indeed, AmerenUE is very proud of the participatory process undertaken to develop its current IRP filing. In accordance with the Stipulation and Agreement approved by the Commission in Case No. EO-2006-0240 (2006 Stipulation), as the Company developed its IRP, it used a participatory process to ensure it included

the insights and ideas of the stakeholders. AmerenUE's goal for the participatory process was to create an open forum for sharing thoughts, ideas and opinions, thereby making AmerenUE's resource planning process more transparent and understandable. This process consisted of an unprecedented number of workshops - 40 - which were held over 30 separate meetings. A complete list of the workshops and the issues covered at each are attached to this Response as Exhibit 1.

Although other utilities have used participatory processes in various proceedings at the Commission, AmerenUE believes that no other process was this involved or invited as much input from as many parties. After reviewing the *Reports* from the other parties in this case, it appears that the majority felt the participatory process was very beneficial. Staff indicated that "AmerenUE did encourage and take input regarding the resource planning process from the parties in those meetings." *Missouri Public Service Commission Staff Report on AmerenUE's Integrated Resource Planning Compliance Filing*, June 19, 2008, Appendix A, p. 1. MIEC indicated that it was

> …appreciative of AmerenUE's efforts to conduct a comprehensive participatory process as part of its IRP development. Participants were always offered the opportunity to present their views, even if contrary, and AmerenUE was receptive to discussing the merits of its approach and proposals, as well as alternatives. MIEC believes this process has contributed to a much better understanding of the electrical requirements of AmerenUE's service territory, the options to meet them, and the associated costs…AmerenUE was receptive to, and made adjustments to its IRP in response to the collaborative sessions… *Report of the Missouri Industrial Energy Consumers on AmerenUE's Integrated Resource Plan*, June 18, 2008, p. 1.

The DNR also expressed its appreciation of the process used by AmerenUE,

> …the department has participated fully in the stakeholder process. In addition to participating in numerous face-to-face meetings, conference calls and electronic correspondence to review and provide comments on various aspects of the analysis required by the IRP rule, staff of the

> department's Energy Center provided review and recommendations in AmerenUE's efforts to contract for outside expertise for DSM analysis, implementation and evaluation. The participatory stakeholder process contributed to the quality of the filing and also was valuable in identifying issues related to the IRP analysis and, in some cases, resolving the issues. *Missouri Department of Natural Resources Energy Center Review of AmerenUE Demonstration of Compliance with Stip [sic] for Case No. EO-2006-0240 Dated May 9, 2008 and Integrated Resource Plan Filing Dated February 5, 2008* (DNR Report), p. 3.

AmerenUE wishes to also express its appreciation to the stakeholders in this case. It recognizes that many stakeholders committed a large amount of time and effort to this process. The Company believes the end result was better for that input and hopes to continue to improve upon this process in the future.

10. Given the openness of this process, the resulting IRP filing should not have contained any surprises for any of the stakeholders. In particular given the process available to the stakeholders, the Company was particularly disappointed that one of the stakeholders – DNR - found it more appropriate to engage an outside consultant to identify alleged deficiencies *after* the filing was made rather than to engage that consultant during the stakeholder process to assist in making the filing as complete and accurate as possible. The result of this after-the-fact review undoubtedly has led to a larger number of alleged deficiencies than would have existed had a before-the-fact review occurred. And while the Company recognizes that all parties have limited resources, it remains disconcerting to AmerenUE that a stakeholder would choose to expend the resources it does have on criticizing the filing after its completion rather than bringing the consultant in during the participatory process as part of a truly constructive effort to help shape the filing and the plan itself. The Company hopes that the participatory process for its next IRP filing can improve and that parties will consider

bringing in any consultant they wish to engage during the participatory process, so that their ideas and input can be included in the development of the IRP, rather than merely offering after-the-fact criticism at the end.

IV. Purpose of Commission's IRP Rules

11. As noted earlier, a number of the stakeholders' alleged "deficiencies" can only truly be characterized as concerns. Moreover, some of the alleged deficiencies, especially those identified by OPC economist Ryan Kind, are based upon resource planning that will occur on an ongoing basis after the date of this IRP and that has a bearing only on a decision that has not yet been made, and that will not be made, until well after another IRP has been filed. In sum, some parties tend to view concerns as deficiencies that they would argue require some kind of Commission action, apparently due to their misunderstanding or, perhaps, misconstruction of the purpose of the Commission's IRP rules.

When the IRP rules were adopted, the Commission noted that it was

> …wary of assuming, either directly or in a de facto fashion, the management prerogatives and responsibilities associated with strategic decision making, preferring to allow utility management the flexibility to make both overall strategic planning decisions and more routine management decisions in a relatively unencumbered framework. *Order of Rulemaking*, Docket No. EX-92-299, December 8, 1992.

The Commission also noted that the IRP rules are not designed to "dictate either the strategic decision itself or the decision-making process." *Id.* The rules themselves state the Commission "…will issue an order which contains findings that the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter…" 4 CSR 240-22.080(13).

The rules do not provide for orders that would dictate a particular planning

process, methodology, or strategic resource decision, and as discussed in detail in Section VI of this *Response*, do not require a hearing of any kind, even if a particular party desires a hearing or desires some further action from the Commission. The rules were not designed as a mechanism for the Commission to pre-approve a resource plan. The Commission itself has made this point every time it has issued an order accepting an electric utility's Integrated Resource Plan, by including the following sentence, "…a Commission finding that a utility is in compliance with these rules is not to be construed as Commission approval of the utility's resource plans, resource acquisition strategies or investment decisions." Case No. EO-2006-0240, *Order Approving Stipulation and Agreement and Accepting 2005 Integrated Resource Plan* [for Union Electric Company], p. 1; Case No. EO-2007-0008, *Order Approving Stipulation and Agreement and Accepting 2006 Integrated Resources Plan* [for Kansas City Power & Light Company], p. 1; Case No. EO-2007-0298, *Order Approving Non-Unanimous Stipulation and Agreement and Accepting Integrated Resources Plan* [for Aquila, Inc.], p. 1; and Case No. ER-2008-0069, *Order Approving Stipulation and Agreement and Accepting 2007 Integrated Resources Plan* [for The Empire District Electric Company], p. 1.

The Commission findings in the above cited rulemaking docket are consistent with the well-recognized legal principle that the Commission does not have authority over utility management decisions. It is only when an electric utility seeks to put the capital and expenses arising from its resource decision(s) into rates that the Commission considers the issue of whether or not a particular resource decision was prudent. "…the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business." State ex rel Public Service Com'n v.

Bonacker, 906 S.W.2d 6, 899, (Mo. App. S.D. 1995), *citing* State v. Public Service Commission, 406 S.W.2d 5, 11[8] (Mo. banc, 1966).

This is not to say a Commission determination that a deficiency in the planning process may have existed is meaningless or not important or useful. It is clearly helpful to improve the resource planning process where possible, and it is apparent from the *2006 Stipulation* and the *Partial Stipulation* reached in this docket that meaningful improvements to the process continue to be made.

12. AmerenUE provides this context respecting why the Commission adopted IRP rules in the first place because of the propensity of the parties in this case to argue that this case should encompass far more than that which the rules contemplate. This case is a planning docket designed to address the adequacy of the process that led to a particular IRP that provides a resource plan as of a particular point in time – last February. This case is not about what particular type of baseload plant may be most prudent for AmerenUE to decide to build *several years from now*. What baseload plant to build, and when, is a management decision which has not yet been made. It is a management decision that will be made by AmerenUE management at the appropriate time, but as noted, not until months after another IRP filing has been made, at the earliest. And ultimately, that decision will be reviewed by the Commission when AmerenUE seeks to put the cost of that resource into rates.

13. Planning is a continuous effort at AmerenUE, as it must be at all utilities. Data collection, analysis and resource planning do not end just because a filing has been made at the Commission. The Commission IRP rules recognize this fact by requiring a utility to file a new IRP filing (outside of the every three year requirement found in 4

CSR 240-22.080(1)) when circumstances have changed so that the preferred resource plan is no longer appropriate. 4 CSR 240-22.080(10). The only way a utility will know a preferred resource plan is no longer appropriate is if the utility's planning process has continued outside of the IRP process.

This does not mean the continued analysis is relevant to whether the process leading to a previously filed IRP was or was not deficient. Indeed, it is not relevant to that process. AmerenUE's February 5, 2008 IRP filing is to be judged by the Commission according to the data collection, analysis and resource planning that led to that filing. It should not be evaluated against or by any analysis which may have occurred after the filing. This IRP filing represents a snapshot in time of AmerenUE's overall resource planning process and should be evaluated accordingly.

To include analysis or other developments which occurred after the plan was filed would create an endless and ongoing IRP docket which could be subject to continuous review at the Commission. The only way to prevent such an endless docket would be for the utility to stop all planning and analysis until after its IRP docket was resolved. It seems apparent to AmerenUE that the Commission does not want to engage in continuous management of the ongoing resource planning process that needs to be occurring at all Missouri utilities, nor does the Commission want those utilities to stop their ongoing analyses for the sake of bringing closure to prior IRP dockets.

Proper application of the Commission's IRP rules will prevent either scenario from occurring. That is the path on which the Commission should proceed - answering only the question posed by 4 CSR 2402-22.080(13) - does AmerenUE's filing – did the process that led to that particular filing and the snapshot in time it reflects -- demonstrate

compliance with the requirements of the IRP rule? If not, the Commission can so find and appropriate corrections can occur in the Company's next IRP filing.

V. Alleged Deficiencies Unresolved by Partial Stipulation

A. OPC

14. There were twelve (out of 43) alleged deficiencies that were not resolved by the *Partial Stipulation*, six from OPC, one from DNR and five from the Sierra Club. AmerenUE will address each of these issues separately.

15. OPC *Report* begins by alleging that AmerenUE cannot adequately analyze demand-side resources on an equivalent basis with supply-side resources because of its lack of experience in implementing large-scale demand side management (DSM) programs. 4 CSR 240-22.010(2). *Review of Union Electric Company Electric Utility Resource Planning Compliance Filing* (OPC Report), p. 3.

AmerenUE believes this may be more properly categorized as a concern rather than a deficiency, as the section referenced is the Policy Objectives portion of the Commission's IRP rules. It is true that AmerenUE's historical experience with implementing large-scale DSM programs is limited. Recognizing this issue early in the IRP process, AmerenUE hired a leading national consultant, ICF International (ICF), to assist in the development and analysis of DSM programs. ICF was selected through a transparent process in which all stakeholders participated in face-to-face interviews with ICF and the other finalists; after those interviews, all stakeholders agreed that ICF was the best selection. Finally, it should be noted that AmerenUE is proposing to implement a wide range of DSM measures and certainly its ability to analyze DSM programs will improve with experience. These facts, however, do not support a finding that the IRP

filing did not comply with the Commission's IRP rules. Indeed, what would be the point of such a finding?

16. OPC's next allegation is that AmerenUE's program design and estimated impacts from its Industrial Demand Response (IDR) program are flawed. 4 CSR 240-22.050(6). *OPC Report*, p. 4.

Again, this is not an allegation that AmerenUE was "deficient" in meeting a portion of the IRP rules. Rather, OPC simply disagrees with the methodology selected by AmerenUE. The cited section of the rules requires that AmerenUE "develop a set of potential demand-side programs that are designed to deliver an appropriate selection of end-use measures to each market segment." OPC's allegation is not that the Company failed to analyze the IDR program or that it failed to include those results in its final resource analysis. Instead, OPC simply indicated that it would have valued the impact of the IDR program differently. AmerenUE agrees, that over time, the participation levels within this program may change, due to changes in the capacity and ancillary services markets. However, based on past experience with interruptible tariffs, the Company believes the participant level will be limited, at least during the introduction of the programs. OPC may disagree, as it is entitled to do, but that disagreement has nothing to do with whether AmerenUE was deficient in following the IRP rules.

AmerenUE continues to closely monitor participant rates within this program and has already agreed, as part of the agreement which implemented the tariff, to make adjustments necessary so that it could qualify as a capacity resource under the Midwest Independent Transmission System Operator, Inc.'s Energy Markets tariff. As AmerenUE continues its IRP process, it will likely make other necessary adjustments based upon the

behavior and results gathered from its current IDR tariff. The fact adjustments to the IDR tariff are likely does not mean that AmerenUE failed to "develop a set of potential demand-side programs that are designed to deliver an appropriate selection of end-use measures to each market segment" and, by definition, that means this is not a deficiency under the IRP rules.

17. OPC's third allegation is that AmerenUE did not use the best available information in its estimation of demand-side program impacts because it modeled the load impacts through use of AmerenUE's MIDAS model and did not use time-differentiated information based on the specific characteristics of each program. 4 CSR 240-22.050(7)(A)(1). *OPC Report*, p. 4.

The rule requires AmerenUE to "…estimate the incremental and cumulative number of program participants and end-use measure installations due to the program and the incremental and cumulative demand reduction and energy savings due to the program in each avoided cost period…" 4 CSR 240-22.050(7)(A)(1). OPC does not assert that AmerenUE failed to do this analysis. OPC is only asserting that, in OPC's opinion, a different, more detailed methodology should have been used. To address the specific suggestion made by OPC, AmerenUE welcomes the addition of measures of which OPC is aware that could enhance our portfolio of Energy Efficiency programs. AmerenUE agrees that, generally, it is possible a more detailed DSM load shape could be developed to include hourly impacts, which could then be applied to the MIDAS modeling of system energy within the analysis. The Company is unsure of the added benefit of this operation, but will perform this analysis within its next IRP analysis and assess the benefit or detriment associated with the introduction of more detailed DSM impact

information on its overall PVRR analysis. The Company does not believe its decision to use a method other than the method OPC supports in this IRP filing is properly considered a deficiency.

18. OPC's fourth alleged deficiency states AmerenUE failed to specify plan selection criteria and related performance measures necessary to be reasonably certain the preferred plan will result in the least cost plan. 4 CSR 240-22.060(2) and 4 CSR 240-22.010(2)(A) and (20(C). *OPC Report*, p. 5.

Of course, as pointed out above, 4 CSR 240-22.010 is the Policy Objectives section of the Commission's IRP rules and is not a provision of the rules which require any particular action to be taken by AmerenUE. Accordingly, it is not a basis for a deficiency allegation.

4 CSR 240.060(2) requires the utility to specify a set of quantitative measures for assessing the performance of alternative resource plans with respect to the identified planning objectives. OPC asserts that the Company should have modeled the financial impact of building a new nuclear power plant, including additional, alternative scenarios where AmerenUE would own only a percentage of a second nuclear power plant. AmerenUE did model, in its IRP filing, two different ownership scenarios, 100% and 75% ownership. Further, as part of its analysis completed for 4 CSR 240-22.040, it discussed the general benefits of including other utilities in the ownership of any potential second nuclear power plant. AmerenUE did not ignore the concept of joint ownership as a possibility. Just because alternative ownership percentages exist (50/50; one-third/two thirds; 40/60; 60/40, etc.) does not mean AmerenUE failed to complete the analysis required by this section of the Commission rules. This is particularly true when

(a) no decision has been made or will be made until after the Company's next IRP filing as to whether to build a second nuclear plant at all; and (b) certainly then no decision on ownership percentages has been made or can be made until at least that time.

OPC also asserts that AmerenUE should have analyzed a different set of financial metrics based upon the assumption that a second nuclear unit would be built and that construction work in progress (CWIP) could not be included in rate case until the entire plant was completed and in-service. AmerenUE did analyze the financing of a second nuclear plant using the assumption that it would take on debt to finance its construction efforts until such time as the plant was used and useful and so could be placed into rates. What it did not do is analyze the impact of this debt accumulation upon the Company's credit rating. The Company agrees this is analysis that must be done prior to the Company making any decision as to whether it will build any type of baseload power plant, whether that option is nuclear, coal or some other fuel choice. However, given that the Company's preferred resource plan in this IRP does not include building a baseload unit, and given that no decision has been or will be made respecting a baseload unit until well after the Company's next IRP filing is made, nothing is to be gained in *this docket* by such an analysis. AmerenUE's overall financial condition, its cash flows and cash flow needs, the state of credit markets, and the cost of capital needed to build another baseload plant over a time horizon when one might be built will all be substantially clearer nearer the time when a decision needs to be made than they were in 2007 and early 2008 when this IRP analysis was being done.

AmerenUE understands that the stakeholders believe this analysis is essential before a baseload plant decision is made and, as noted, agrees the analysis needs to be

done before that time. As a consequence, AmerenUE commits to undertaking such an analysis in its next IRP filing, to be filed prior to a decision to build or not build an additional baseload power plant. This commitment is made regardless of when circumstances cause the next filing to occur – even if that were prior to April 5, 2011, which is the date for AmerenUE's next required IRP filing.[2] The Company recognizes that the IRP rules prescribe a minimum of 180 days between the filing date and resolution of the case (120 days for Staff, OPC and intervenors to file a report identifying alleged deficiencies, 45 days to work out a joint agreement to remedy identified deficiencies and, if issues remain unresolved, 15 additional days to put together a response to the alleged deficiencies). Accordingly, AmerenUE commits that it will not make a decision on a baseload plant until at least 180 days after it files its next IRP. Given the high level of stakeholder involvement anticipated during the participatory process leading up to its next IRP, 180 days is a sufficient amount of time for others to consider any such analysis in the context of AmerenUE's next IRP.

Of course, the 180 days does not include any time for the possibility of a hearing on unresolved alleged deficiencies. The Company cannot commit that it will delay a baseload plant decision more than 180 days - for some indefinite period of time until the next IRP case is completely resolved - as there may be valid drivers that, in exercising prudent decision making, require a decision prior to that point. However, the Company is aware that should one or more parties point out substantial and real deficiencies with its next IRP, it will have been put on notice that the IRP analysis may be insufficient to justify a baseload plant decision at that time. The Company is also aware that proceeding

[2] As earlier noted, AmerenUE would have to file prior to that date if it determined that circumstances had changed so that its preferred resource plan was no longer appropriate. 4 CSR 240-22.080(10).

with a baseload plant in the face of legitimate deficiencies in the IRP that led to a baseload plant decision could have a substantial bearing on prudence issues that could arise when the expenses and capital associated with any such plant are sought to be included in rates.

From the Commission's standpoint, AmerenUE's commitment should satisfactorily resolve this alleged deficiency. As the earlier discussion of the purpose of the IRP rules made clear, management of the utility's business, including resource decisions, is to be left to the utility, and is not to be made via the Commission's approval in an IRP docket. Nor must a utility conduct an analysis or satisfy all stakeholders, including OPC, in the context of an IRP docket, particularly when no decision will be made on the subject issue until after another IRP filing will be made.

19. OPC's fifth alleged deficiency is that the Company failed to construct a wide range of alternative resource plans so that it can be reasonably certain the preferred plan will result in the least cost. 4 CSR 240-22.060(3) and 4 CSR 240-22.010(2)(A). *OPC Report*, p. 7.

Again, OPC is alleging deficiencies tied to the Policy Objectives section of the Commission's IRP rules rather than to a provision of the rules which require a particular action to be taken by AmerenUE and, accordingly, this is a concern rather than a true deficiency allegation.

The resource plans considered by AmerenUE within its IRP filing were discussed and reviewed with all stakeholders as part of the participatory process. AmerenUE evaluated 110 alternative resource plans which consisted of combinations of several demand-side and supply-side resources. Merely identifying an additional scenario,

without more, does not make AmerenUE's analysis insufficient. Further, as already noted, the Company commits to making its next IRP filing prior to making a decision to add any new baseload power plant, even if that requires it to move up the date for its next IRP filing.

20. OPC's final deficiency allegation is that AmerenUE failed to identify all of the uncertain factors that are critical to the performance of the resource plan. 4 CSR 240-22.070(2). OPC's reasoning points to statements made by AmerenUE CEO Tom Voss about the impact of the statutory prohibition on CWIP upon AmerenUE's ability to build a second nuclear plant and states that the Company should have included this as a critical uncertain factor. *OPC Report*, p. 8.

This issue was already addressed in part above. While AmerenUE agrees that this factor would need to be considered prior to a decision to build a new baseload power plant, OPC is incorrect in identifying this as a deficiency of AmerenUE's IRP. The IRP rules specify that the Integrated Resource Analysis completed in the IRP must be done in a manner consistent with Missouri law. The rule states, "The modeling procedure shall be based on the assumption that rates will be adjusted annually, in a manner that is consistent with Missouri law." 4 CSR 240-22.060(4)(B). AmerenUE did not consider how the allowance of CWIP into its rate base, which would require a statutory change, would impact any decision to build a baseload power plant, as that consideration would not be consistent with Missouri law. Under the Commission's rules, the Company is not required to implement OPC's recommendation under this section of the rule.

That said, AmerenUE agrees consideration of this issue is important and that it should be done before a baseload plant decision is made. The Company will complete

this analysis prior to the filing of its next IRP, which will also be prior to the Company making a decision on whether or not to build a new baseload power plant, as set forth above.

B. DNR

21. DNR had one unresolved alleged deficiency. DNR states that AmerenUE failed to include a very aggressive approach for the achievable potential of the demand-side portfolio, which did not allow the Company to fully evaluate the impact of reductions on the magnitude of the Company's next capacity addition prior to making major commitments to that capacity addition. 4 CSR 240-22.050(4). *DNR Report, Synapse Attachment*, p. 8.

This section of the Commission rules does not mandate an "aggressive approach." It merely requires the utility to "estimate the technical potential of each end-use measure that passes the screening test." 4 CSR 240-22.050(4). DNR does not allege that AmerenUE failed to estimate the technical potential of each end-use measure; it only alleges that AmerenUE failed to *aggressively* estimate the technical potential for each end-use measure.

AmerenUE believes the correct citation for DNR's alleged deficiency is to the *2006 Stipulation*, in which AmerenUE agreed to model two portfolios of demand-side resources, including both moderate and aggressive portfolios as part of its Integrated Resource Analysis. EO-2006-0240, Non-Unanimous Stipulation and Agreement, ¶ 25A. However, AmerenUE believes that it did model an aggressive portfolio and that it even provided at least one portfolio with a very aggressive approach to encouraging program participation.

DNR's allegation refers to Energy Efficiency targets in other states as proof that AmerenUE's goals in the IRP are not aggressive. Exhibit 2 to this pleading is a map which sets forth Energy Efficiency Resource Standards as they have been implemented throughout the United States. As demonstrated by Exhibit 2, a simple comparison to other states is not appropriate – many states with Energy Efficiency targets mandated by law also have cost limitations associated with that target. If a target cannot be met within the cost cap, the utility is not obligated to meet the target. An example of this is the law in Illinois, which is cited by DNR as being more aggressive than AmerenUE's IRP.

Whether or not AmerenUE's IRP should be considered "aggressive" also depends on the measure chosen to determine aggressiveness. When comparing the financial investment AmerenUE is making as a percentage of total AmerenUE electric revenues, the AmerenUE DSM budget represents approximately 1.2% of total revenues in the first year and rises to 1.9% by the third year of its 3-year implementation plan. This should be considered as very aggressive. In fact, AmerenUE's DSM investment of 1.9% of total revenues would rank AmerenUE among the top five states based on the American Council For An Energy Efficient Economy's June 2007 *State Energy Efficiency Scorecard For 2006*.

AmerenUE believes it is best to determine, as accurately as possible, the value and cost of various levels of energy efficiency measures. To improve upon its ability to make those determinations, AmerenUE has already engaged a consultant with specific expertise in the development of energy efficiency supply curves to develop a customized supply curve for the AmerenUE service territory, rather than just relying upon the results of another state, which may or may not hold true for AmerenUE's service territory (DSM

potential study). The DSM potential study will assign costs per unit saved to various levels of energy efficiency market share. With this information, AmerenUE will be able to better assign costs to various levels of energy efficiency market shares. AmerenUE expects to have this work completed by the end of 2009.

C. SIERRA CLUB

22. The Sierra Club's first unresolved alleged deficiency is very similar to the DNR alleged deficiency discussed above. 4 CSR 240-22.050(4). 4 CSR 240-22.030(7). Report of Intervenors *Sierra Club, et al. on AmerenUE's IRP Compliance with 4 CSR 240, Chapter 22* (Sierra Club Report), p.8.

Similar to the DNR allegation discussed above, this alleged deficiency related back to the *2006 Stipulation* and the phrase "aggressive approach." AmerenUE will not repeat its answer here but rather refers the Commission to the information and explanation contained in the preceding paragraph.

23. The Sierra Club's second unresolved alleged deficiency deals with the load forecasts developed in the IRP. The Sierra Club points out that AmerenUE only developed a base case and a low-growth case load forecast, while the Commission's rules require the utility to produce a high load-growth case as well. The Sierra Club continues to assert the Company adopted its base case as its high case, which artificially maximizes load growth and contradicts the assumption of lower growth rates. *Sierra Club Report*, p. 1.

It is true that AmerenUE did not include a high-growth load forecast. Staff also identified this as a deficiency in AmerenUE's IRP filing. AmerenUE acknowledges the deficiency and, as per the *Partial Stipulation*, has agreed that the Company would either

provide a high load-growth forecast or request a waiver from this requirement in its next IRP filing. Beyond the recognition that AmerenUE did not provide a high load-growth forecast, the rest of the Sierra Club's allegation is incorrect.

The lack of a high load-growth forecast does not damage the validity of AmerenUE's IRP filing. All of the risk factors identified in the risk analysis section pointed to lower future load demand rather than higher load demand. Because of this, AmerenUE believed a high load-growth forecast to be unrealistic and so did not use high load demand in its analysis. AmerenUE discussed this fact in the stakeholder workshops in advance of the IRP filing.

The Sierra Club's statement that AmerenUE's analysis artificially maximizes load growth is a complete misinterpretation of what AmerenUE did. The base forecast is the Company's best estimate of future loads based on what is known today about those factors that influence load. The Company utilized the load growth it believed is likely to occur, not an artificially maximized growth rate. The fact the Company did not develop a high case, in fact, disproves the Sierra Club's point. Had the Company developed a high case, when it thought that most risk factors pointed to lower demand, and then used the high case in the build scenario, it would have resulted in artificially maximizing load growth. Since that is not what happened, the Sierra Club's contention is inaccurate.

24. The Sierra Club's third alleged deficiency is that AmerenUE failed to address the environmental impact of tritium and noble gases. 4 CSR 240-22.040(1)(K). *Sierra Club Report*, pp. 2-3.

AmerenUE's IRP filing does not explicitly address the environmental impact of tritium and noble gases, nor do the rules require the Company to do so. This section of

the IRP rules requires a utility to analyze the environmental impacts of certain items. Tritium and noble gases are not listed nor is there any reason to add them to those listed as needing further evaluation. In fact, as the Sierra Club is likely aware, the discharge of these effluents at AmerenUE's Callaway Plant is within federal guidelines. At this time, AmerenUE is unaware of any credible proposal to change the federal guidelines in the foreseeable future in a manner which would require the Company to remove these effluents. Given that these effluents are not listed in the IRP rules, and moreover, given that there is no credible scenario in which federal regulation of these effluents would change, there is no justification for the Sierra Club's allegation of a deficiency. This section of the rule does not require the Company to speculate on the theoretical cost of every possible environmental impact and how technology might someday impact that cost without a credible basis that such a change in the law might be forthcoming. This is not a deficiency in AmerenUE's IRP filing and should be rejected by the Commission.

25. The Sierra Club's fourth alleged deficiency is that the overnight costs and O&M costs given for a US-EPR nuclear reactor are unrealistically low compared to estimate capital costs. 4 CSR 240-22.040(8)(B). *Sierra Club Report*, p. 6.

Estimating the cost of construction of a nuclear reactor to be built several years in the future is a daunting task. In order to come up with the best estimate possible for this IRP – an estimate that had to be developed before the plant is or can be designed -- AmerenUE hired an independent, external consultant to provide the data relied upon for this cost estimate. The analysis methodology was discussed and reviewed through the stakeholder process. While it is possible that this estimate will change over time, it was the best estimate AmerenUE had available to it when it completed the IRP filing. This is

not a deficiency; it is not a failure of AmerenUE to follow some aspect of the Commission's IRP rules. Rather, this is the Sierra Club arguing that it would have estimated the cost in a different manner than the one AmerenUE chose. Sierra Club is entitled to its opinion, but its opinion does not render AmerenUE's analysis deficient.

AmerenUE's statement that this is not a true deficiency should not be seen as the Company ignoring the importance of using as accurate a cost estimate as is available. An additional safeguard against the possibility of inaccuracy in its estimate is the Company's commitment to making a new IRP filing prior to a decision to build any new baseload power plant, as discussed above. This means that an additional estimate, based upon more timely information, will necessarily be carefully reviewed at least one more time before any baseload power plant decision is made.

26. The Sierra's Club's fifth unresolved alleged deficiency is that the IRP does not give cumulative probability distributions for performance measures. 4 CSR 240-22.070(5)[3]. *Sierra Club Report*, p. 9.

This section of the Commission's IRP rules require cumulative probability distributions for five specified performance measures, which are listed in the rule. The first is the present value of utility revenue requirement (PVRR). The primary decision criteria for the selection of the preferred plan was this analysis. This analysis was completed and was reported in the IRP filed in February of 2008.

The second cumulative probability distribution is the present worth of probable environmental costs. The table on page 19 of 54 in the IRP for 4 CSR 240-22.060(6) shows the levelized emission expenditures by plan, by scenario. It is clear that the values

[3] The Partial Stipulation referenced 4 CSR 240-22.060(2) as the source for this alleged deficiency, although the correct reference appears to be 4 CSR 240-22.070(5).

of the preferred plan (which is number 16) are generally among the lowest, so AmerenUE determined it was not necessary to provide a cumulative probability distribution, since it would provide nearly the same result as that of the PVRR criteria.

The third cumulative probability distribution is the present worth of out-of-pocket costs to DSM participants. The 18 top plans in the final analysis were all comprised of "aggressive DSM" in which the out-of-pocket expenses were not determined to impact participation. Accordingly, AmerenUE determined it was not necessary to perform a cumulative probability distribution.

The fourth cumulative probability distribution is the levelized annual average rates. The middle table on page 20 of 54 in the write up for 4 CSR 240-22.060(6) shows the levelized annual average rate by plan by scenario. It is clear that the values of the preferred plan (which is number 16) are generally among the lowest, so AmerenUE determined that it was not necessary to provide a cumulative probability distribution. Additionally, it would provide nearly the same result as the more important criteria, the PVRR.

The final cumulative probability distribution is the maximum single-year increase in annual average rates. The bottom table on page 20 of 54 in the write up for 4 CSR 240-22.060(6) shows the maximum single-year increase in annual average rates by plan by scenario. It is clear that the values of nuclear plans are generally among the worst (highest), but this item conveys results of any single-year outcome, while it is unlikely that decisions about the preferred plan will be based on any single-year outcome or on any single item since the IRP rules are geared towards a multi-year time horizon. For this reason, AmerenUE decided that it was not necessary to provide a cumulative probability

distribution. Any single-year outcome is unlikely to drive the decision on the preferred plan.

VI. Final Resolution of This Docket

27. As noted earlier, the IRP rules provide that the Commission, after the utility, Staff, OPC and other intervenors have filed comments in response to each other, will issue an order which indicates on what items, if any, a hearing will be held. 4 CSR 240-22.080(9).

There is no need for a hearing in this docket and no party is entitled to any such hearing. The Commission made this clear when it adopted the IRP rules: "The Commission believes it should retain the discretion not to schedule a hearing when it believes a hearing is not warranted." Case No. EX-92-299, Order of Rulemaking, December 8, 1992.

28. Nor does the Missouri Administrative Procedure Act (MAPA) require a hearing. Administrative proceedings, including those of the Commission, are governed by the MAPA, contained in Chapter 536 of the Missouri Revised Statutes.

The MAPA creates two kinds of administrative proceedings; contested cases and non-contested cases. *Mosley v. City of Berkeley*, 23 S.W.3d 855, 859 (Mo. App. E.D. 2000). Many of the MAPA's requirements, including those that require an evidentiary record (cross-examination, sworn testimony, etc.) apply only to a contested case. Accordingly, an analysis of these requirements must start with the definition of "contested case." Whether or not a particular proceeding before an administrative agency is or is not a contested case turns on whether or not a hearing is required by law with respect to the proceeding at issue. "Contested case means a proceeding before an agency

in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." § 536.010(4) RSMo.

As discussed above, there is provision in the Commission's IRP rules which requires a hearing to be held. Consequently, an IRP case is not a contested case as a matter of law.[4]

29. For the foregoing reasons, the Commission should resolve this docket without a hearing, but with the order required by 4 CSR 22.080(13), which could reflect the Company's commitments respecting filing another IRP prior to making a decision respecting a new baseload plant. The Commission can also render its findings regarding whether it agrees with the Company or other parties respecting the few remaining deficiencies. If the Commission does find that any deficiencies remain, the Company can perform its next IRP consistent with the Commission's findings.

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[4] Neither does the fact that parties are "contesting" various issues in this docket, regardless of how hotly they are contested or discussed, render this docket to be a contested case. As the Missouri Supreme Court has held, "In other words, 'contested case' within the meaning of the Act [MAPA] does not mean every case in which there may be a contest about 'rights, duties or privileges' but instead one in which the contest is required by law to be decided in a hearing before an administrative agency." *Randle v. Spradling*, 556 S.W.2d 10, 11 (Mo. banc 1977); *State ex rel. Leggett v. Jensen*, 318 S.W. 2d 353,356 (Mo banc 1958; *Welch v. Department of Elementary and Secondary Ed*, 731 S.W.2d 450, 453 (Mo. App. S.D., September 8, 2006); *Shawnee Bend Special Rd. Dist. D v. Camden County Comm'n*, 800 S.W.2d 452, 456 (Mo. App. S.D. 1990). And no agency, including this Commission, can create a contested case where one does not otherwise exist. "The classification of case [sic] as 'contested' or 'noncontested' is not left to discretion of the agency but rather is to be determined as matter of law. *Cade v. Department of Social Services*, 990 S.W.2d 32, 36 (Mo. App. W.D. 1999); *State ex rel. Valentine v. Board of Police Comm'rs of Kansas City*, 813 S.W.2d 955, 957 (Mo. App. W.D. 1991). That determination as a matter of law is made by whether or not the law *requires* that a hearing be held. Here, it does not.

Some parties may argue that because the IRP Rules require the Commission to make findings or otherwise make a decision, the case is "contested." That argument fails because as already discussed, it is the *requirement that a hearing be held* as a matter of law that determines whether a case is contested or non-contested. This erroneous argument apparently assumes that the phrase "contested case" means nothing more than there is at least a disputed issue between those participating in the docket. That assumption is incorrect, as the courts have consistently rejected this argument, finding that contested means something different than disputed. "The fact that there is some contest between the parties does not, in and of itself, make for a contested case." *Cade*, 990 S.W.2d at 36. The Missouri Supreme Court also rejected this argument, stating that a contested case "…does not mean every case in which there may be a contest about 'rights, duties or privileges'…" *Hagely v. Board of Ed. of Webster Groves School District*, 841 S.W.2d 663, 667 (Mo. banc 1992) (overruled on other grounds).

30. If the Commission were to decide to order a hearing, then AmerenUE requests a hearing be scheduled quickly. As the Commission is aware, AmerenUE currently has a rate case pending and the evidentiary hearings in that case are scheduled to start on November 17, 2008 and are scheduled through December 5, 2008. It is in the Company's interests as well as that of the other parties to resolve this docket quickly and well before the rate case proceeds even further. The parties in this docket have all filed their positions on AmerenUE's IRP. Nothing more is required by the IRP rules. Because any such hearing is not required by law and is thus not a contested case, the hearing need not involve any particular formality, and could simply consist of an on-the-record hearing where Commissioner questions could be answered. AmerenUE is prepared to participate in any such hearing as soon as September 29, 2008 or any day later that week, which is after the first technical conference and after all local public hearings have been held in its pending rate case.

WHEREFORE, AmerenUE asks the Commission to accept this *Response* in fulfillment of the requirements of Commission regulation 4 CSR 240-22.080(9).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 12th day of September, 2008.

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