

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

In re: Union Electric Company's 2005       )  
Utility Resource Filing Pursuant to       )  
4 CSR 240 – Chapter 22.                       )

**Case No. EO-2006-0240**

**PUBLIC COUNSEL'S RESPONSE TO JUDGE WOODRUFF'S QUESTIONS, MOTION  
TO ADOPT PROCEDURAL SCHEDULE AND MOTION FOR HEARING**

COMES NOW the Office of the Public Counsel (Public Counsel or OPC) and for its response to the request made by Judge Woodruff at the October 10, 2006 conference for further filings by the parties, states as follows:

**I. Background**

1. Union Electric Company (UE) made its IRP filing pursuant to the requirements of Chapter 22 on December 5, 2005. The Commission Staff (Staff), the Missouri Department of Natural Resources (DNR), Public Counsel, and Sierra Club et. al. (Sierra Club) filed reports identifying deficiencies in UE's IRP filing on May 19, 2006.

2. On August 4, 2006 the JOINT FILING OF AMERENUE, MISSOURI PUBLIC SERVICE COMMISSION STAFF, OFFICE OF PUBLIC COUNSEL, MISSOURI DEPARTMENT OF NATURAL RESOURCES AND SIERRA CLUB, et al. (Joint Filing) was filed in this case. The Joint Filing contained agreements to resolve 3 of the 22 deficiencies identified in Public Counsel's Review of Union Electric Company d/b/a AmerenUE Electric Utility Resource Planning Compliance Filing (OPC's Report).

3. On August 15, 2006 a STIPULATION AND AGREEMENT BETWEEN AMERENUE AND STAFF (Staff/UE Stipulation) was filed which contains provisions that UE

and Staff agreed upon to resolve the deficiencies that were alleged by Staff in this case. This non-unanimous stipulation and agreement was signed only by Staff and UE, and no party other than UE has asserted that it should be the basis for resolving the deficiencies identified by DNR, Sierra Club, and Public Counsel that were not resolved by the Joint Filing.

4. AMERENUE’S RESPONSE TO MAY 19, 2006 REPORTS AND COMMENTS (UE’s Response) was filed on September 15. The UE Response includes: (1) the Company’s response in Appendix A to each of the nineteen unresolved deficiencies identified in OPC’s Report and (2) UE’s argument that “even if the Commission finds one or more areas to be deficient within the Company’s IRP filing, any concern connected with the deficiency should be mitigated by the fact that AmerenUE does not face an immediate need for additional baseload or peaking generation capacity.”

5. Pursuant to the Commission’s September 19, 2006 ORDER SCHEDULING A CONFERENCE, a conference was held on October 10, 2006 in order for the parties to discuss whether the Commission should schedule a hearing on any of the issues in this case. In addition to discussing the topic specified in the order at this conference, the parties were directed by Regulatory Law Judge Woodruff to jointly or separately make filing(s) no later than October 17 that addressed two questions. Judge Woodruff’s first question was: Should the Commission make a ruling based on the record without a hearing, and if so, is there additional information, not yet filed in this case, that the Commission should consider in making a ruling? Judge Woodruff’s second question was: Should the Commission conduct a hearing in this case, and if so, what should the procedural schedule be for pre-filed testimony and the hearing?

## **II. Public Counsel's Response to Questions Asked by Judge Woodruff at the October 10, 2006 Conference**

6. Public Counsel's response to Judge Woodruff's first question is that this case involves factual issues that cannot be determined by the Commission without evidence. It will be necessary for the Commission to consider sworn testimony on behalf of the parties from expert witnesses and to hold an evidentiary hearing where such witnesses are subject to cross-examination. If the Commission disagrees with Public Counsel's view that the Commission requires sworn testimony to make a determination in this case and decides to make a decision based on the record without a hearing, then Public Counsel requests that it be permitted to provide additional information consisting of OPC's proposals (and the rationale for each of those proposals) for remedying each of the outstanding OPC deficiencies that were not resolved in the August 4, 2006 Joint Filing. Public Counsel also believes that an evidentiary record and hearing is necessary in this case because UE has suggested that the Commission can rely on the Staff/UE Stipulation to address many of the deficiencies identified by DNR, Sierra Club and Public Counsel. OPC does not believe that the Commission could properly make such a determination without giving DNR, Sierra Club and Public Counsel the opportunity to cross-examine witnesses and question the evidentiary basis for this determination.

7. Public Counsel's response to Judge Woodruff's second question is that yes, Public Counsel believes the Commission should conduct a hearing in this case, and it should do so pursuant to the procedural schedule being filed today by the Commission Staff in a pleading entitled NONUNANIMOUS JOINT RECOMMENDATION RESPECTING PROCEDURAL SCHEDULE.

### **III. UE's Appendix A Response to Unresolved Deficiencies Identified by OPC**

8. UE's response in Appendix A to the nineteen remaining unresolved OPC deficiencies contains a number of excuses, rationalizations, and misstatements in an attempt to support the Company's positions that: (1) the Commission does not need to order remedies to address the remaining unresolved deficiencies that were identified by Public Counsel and (2) the Commission should make a finding that UE's resource acquisition strategy meets the requirements of 4 CSR 240-22.010(A)-(C), despite the nineteen remaining unresolved deficiencies identified by OPC. The remaining nineteen unresolved deficiencies identified by Public Counsel and Public Counsel's corresponding recommended remedies to each of those deficiencies are listed in Attachment A to this pleading.

9. UE has repeatedly asserted that its 2005 IRP filing was in full compliance with Chapter 22. Despite these repeated assertions, UE attempts, in Appendix A, to explain away its deficiencies with: (1) repeated references to its DSM "placeholder" analysis (even though the Commission did not grant UE a variance from the rule that would allow it to merely perform a "placeholder" analysis for DSM), (2) inaccurate statements about OPC's intentions in reviewing UE filing, (3) references to the rule being outdated, and (4) an incorrect characterization about the concerns of multiple stakeholders "related to time commitments involved in a collaborative stakeholder process." A procedural schedule that allows for pre-filed testimony and an evidentiary hearing with cross-examination is necessary to determine whether UE's assertion of full compliance with Chapter 22 can be reconciled with many of UE's responses to the unresolved OPC deficiencies in Appendix A to UE's Response.

10. One of the deficiencies cited by OPC is so basic to the planning process, and the proposed remedy so simple, that Public Counsel is at a loss to explain why UE is fighting so

hard. 22.080(1)(D) requires verification that the resource acquisition strategy has been officially approved by UE. UE has not provided that verification, and Public Counsel's proposed remedy is simply that it be provided.

11. Much of UE's argument that the Commission should essentially ignore the unresolved deficiencies identified by OPC rests upon the rationalization for using "placeholders" in the Demand-Side resource area. This "placeholder" excuse is set forth in UE's response to OPC deficiency number 2 on page 2 of Appendix A to UE's Response. In its response to deficiency number 2, UE asserts that it decided to only perform a "placeholder" analysis for demand-side resources "due to the plethora of unresolved issues concerning how to evaluate demand-side initiatives in today's long-term resource planning environment." This most recent rationalization by UE for not giving serious consideration to demand-side resources appears to be the latest consequence of the Company's long-standing philosophy towards energy efficiency programs that was described on pages 6-8 of OPC's Report. UE's response to deficiencies 9, 10, and 11 all reference UE's response to OPC deficiency number 2. As noted above, this Commission did not grant UE a waiver from the requirements of 4 CSR 240-22.010(2)(A), 4 CSR 240-22.050, and 4 CSR 240-22.060(3) that would permit the Company to merely perform a "placeholder" analysis for DSM instead of complying with the IRP rule.

12 It is troubling to Public Counsel, and should be to the Commission as well, that the largest regulated electric utility in Missouri continues to expend its resources (and necessarily the resources of Public Counsel, the Staff, DNR, etc.) desperately making up excuses for not performing credible DSM analyses, while most of the other regulated Missouri electric utilities are busy implementing portfolios of DSM programs that have been developed with input from stakeholders. In attachment A to UE's Response, the Company states that it "went to great

lengths” to notify stakeholders in advance of its December 2005 IRP filing that its IRP filing would only include a “placeholder” DSM analysis. UE asserts that it notified stakeholders “in the semi-annual resource planning meetings with stakeholders since the suspension of the IRP rules, and in other forums.” Public Counsel never received any notification of UE’s intent to merely perform placeholder DSM analysis until less than one month prior to UE’s December 5, 2005 IRP filing. The last semi-annual IRP meeting prior to UE’s IRP filing was on May 2, 2005 and UE made no mention of the DSM “placeholder” concept at that meeting. Of course, if UE had decided in advance of its IRP filing that it preferred to submit only a placeholder DSM analysis rather than a credible and comprehensive analysis, it should have informed the Commission of its intentions prior to the IRP filing and sought the waivers from the Commission that would be necessary for a placeholder approach that did not comply with the requirements of Chapter 22.

13. Because Public Counsel was concerned (primarily due to UE’s prior poor efforts in this area) that UE would not give serious consideration to demand-side resources in its December 2005 IRP filing, Public Counsel offered to work intensively with UE (see the first full paragraph on page 2 of Attachment B), well in advance of the December 2005 filing, to develop a portfolio of DSM programs that could be included in alternative resource plans and analyzed in integrated and risk analysis. UE chose not to accept this offer, and as a result we are mired in the adversarial process of having the Commission make determinations about UE’s IRP filing. Rather than litigating, the parties could have been focused on working collaboratively to develop DSM programs that could reduce customer bills, mitigate fuel and environmental risk, and provide utility services in a manner that is less harmful to the environment.

#### **IV. UE's Argument That Deficiencies Can Be Ignored Because the Company Has No Immediate Need For Additional Generating Capacity**

14. As noted above in paragraph 4, UE's Response contained the argument that "even if the Commission finds one or more areas to be deficient within the Company's IRP filing, any concern connected with the deficiency should be mitigated by the fact that AmerenUE does not face an immediate need for additional baseload or peaking generation capacity." This argument essentially reduces the scope of integrated resource planning to a very narrow short-term supply-side planning process where both the analysis of demand-side resources and risk considerations can presumably be ignored for years (at least until the time of the utility's next triennial IRP filing). Such an interpretation of Chapter 22 is obviously inconsistent with fundamental objective of the rule set forth in 4 CSR 240-22.010(2)(A) which requires electric utilities to "consider and analyze demand-side efficiency and energy management measures on an equivalent basis with supply-side alternatives in the resource planning process." Such an interpretation also ignores the important analysis necessary to address the fundamental objective set forth in 4 CSR 240-22.010(2)(C) which requires electric utilities to identify and analyze risks associated with environmental regulations and other critical uncertain factors.

15. UE's argument that there is no urgent need to promptly address deficiencies is astonishing in light of the risks that the Company acknowledges in addressing: (1) current and possible future environment regulations and (2) uncertainties in the price and availability of the fossil fuels that it needs to generate electricity. UE's December 2005 IRP filing failed to properly explore the extent to which near-term investments in DSM, pollution control installations, and renewable generation resources could mitigate the risks of: (1) complying with

current and possible future environment regulations and (2) potential supply disruptions and price volatility of fossil fuels.

16. UE's holding company, Ameren, has recognized the risks that it faces in complying with possible new environmental regulations. The "RISK FACTORS" section of the Ameren Corporation's 10-k that is dated March 7, 2006 states that:

Future initiatives regarding greenhouse gas emissions and global warming continue to be the subject of much debate. As a result of our diverse fuel portfolio, our contribution to greenhouse gases varies among our generating facilities. Coal-fired power plants, however, are significant sources of carbon dioxide, a principal greenhouse gas.

17. UE and its holding company, Ameren, have both recognized the risks in the fossil fuel area. The direct testimony of Martin J. Lyons, Jr. on behalf of UE in Case No. ER-2007-0002 stated on pages 4 and 5 that:

AmerenUE's fuel, fuel-related transportation and purchased power costs are large and volatile components of its cost of service. Moreover, these costs fluctuate based on changes in national and international market conditions, and as a result they are in large part beyond AmerenUE's ability to control. AmerenUE witness Robert K. Neff explains in detail in his direct testimony how changes in coal and coal transportation costs are impacting the Company. Ever greater volatility in the natural gas market impacts the cost of operating AmerenUE's gas peaking units, and volatility in nuclear fuel costs has increased substantially in recent years, adding to the overall problem. Finally, the volatility in fuel prices has led to more volatile purchased power costs.

In addition, Ameren's gas supply manager, Ken Dothage recently declared that the United States is fast approaching a "natural gas crisis" in an article on page 9 of the May-June Ameren Journal. The article quoting Mr. Dothage in the Ameren Journal stated:

"We're fast approaching a natural gas crisis in the United States. Natural gas is plentiful in key areas of the U.S., however, new exploration and drilling in these areas is strictly prohibited due to environmental and land use regulations," says Ken Dothage, manager, Gas Supply. "We don't see the situation dramatically improving in the foreseeable future so manufacturing natural gas from Illinois coal is a solution that makes too much sense economically to ignore."

18. The UE Response also argues that “the deficiencies alleged by Staff are not appreciably different from those raised by OPC, DNR or the Sierra Club” and that “the major difference appears to be the issue of timing.” Then, based upon this invalid argument, UE proceeds to conclude that it would not be appropriate for “the Commission to order AmerenUE to undertake a significant rewrite of its current IRP filing” except for the very limited “rewrite” that UE has agreed to perform in the non-unanimous UE/Staff Stipulation.

19. Public Counsel strongly disagrees with UE’s claim that the deficiencies identified by OPC, DNR and the Sierra Club are not “appreciably different” than those raised by Staff. Many of the deficiencies identified by OPC, DNR or the Sierra Club are substantially different from, and beyond the scope of, those raised by the Commission Staff. Because of this, the UE/Staff Stipulation does not address many of the deficiencies raised by other parties.

20. Of the 19 remaining unresolved deficiencies that were identified by OPC, only four (OPC deficiencies 2, 9, 16 and 17) were roughly the same as deficiencies identified by Staff. There is also some overlap between OPC deficiencies 3 and 11 and Staff deficiency 11 (regarding wind resources) but the deficiencies cited by OPC are much broader than the deficiency cited by Staff. That leaves 13 OPC deficiencies that are different than the deficiencies cited by Staff.

21. While Public Counsel disagrees in many instances with the appropriateness of the remedies that UE and Staff agreed upon to resolve many of the Staff deficiencies that are similar to those cited by OPC, there are an additional 13 OPC deficiencies that are beyond the scope of deficiencies cited by Staff and no remedies for those deficiencies are included in the Staff/UE Stipulation. OPC would also note that there is substantial overlap between those deficiencies cited by OPC that are unresolved by the UE/Staff Stipulation and those cited by DNR and the

Sierra Club that remain unresolved. It is also important to note that, where similar deficiencies are addressed in the UE/Staff Stipulation, such as UE's huge deficiencies in the DSM area, OPC does not believe they have been resolved in a manner that protects consumers from the harm that can result from a flawed planning process.

22. Even if the UE/Staff Stipulation that addressed the deficiencies identified by Staff had covered all of the same deficiencies raised by other parties (it clearly did not), it would **not** commit UE to perform additional integrated and risk analysis of alternative plans. and, if necessary based on that analysis, create a new resource acquisition plan. Instead, the UE/Staff Stipulation defers performing the vast majority of additional analysis for several years. This deferral could cause substantial harm to ratepayers since UE actions to implement a new resource acquisition strategy based on proper analysis would be delayed for years. This delay could be very harmful to consumers if the additional analysis that is deferred would have led to the choice of a new resource acquisition strategy that could benefit customers through the acquisition of resources that reduce utility costs or mitigate future risks that UE says it is facing in areas such as fuel price volatility and environmental compliance.

## **V. Conclusion**

23. UE will not have a resource acquisition strategy that meets the requirements of 4 CSR 240-22.020(A)-(C) unless the deficiencies identified by OPC are addressed with appropriate remedies. Consumers will be harmed if UE is not required to comply with the rule and does not have in place a resource acquisition strategy that meets the requirements of 4 CSR 240-22.020(A)-(C). The limited remedies included in the UE/Staff Stipulation are not sufficient to protect customers from the harm that will likely result from a flawed planning process if UE is correct about the risks it is currently facing in the areas of environmental compliance and fuel

cost volatility. It is especially important for the Commission to address UE's unresolved IRP deficiencies identified by DNR, Sierra Club, and Public Counsel at this time since UE is currently seeking Commission approval of a fuel adjustment clause in its pending rate case that could result in the transfer of most fuel price risk from shareholders to customers.

WHEREFORE, Public Counsel respectfully requests that the Commission: 1) grant Public Counsel's motion for a hearing and 2) adopt the procedural schedule set forth in the NONUNANIMOUS JOINT RECOMMENDATION RESPECTING PROCEDURAL SCHEDULE filed today by the Commission Staff.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 17<sup>th</sup> day of October 2006:

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**/s/ Lewis R. Mills**

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## OPC's List of Unresolved Deficiencies and Recommended Remedies

Many of the recommended remedies in the list below include three or nine month deadlines for making a filing with the Commission to supplement/replace UE's December 2005 IRP filing. The idea is for UE to make 2 major supplemental filings in order to remedy the deficiencies identified by Public Counsel. These filings would take place three months and nine months after the effective date of a Commission order approving an agreement among the parties to resolve issues in this case. Please note that the page number references at the end of the paragraphs describing deficiencies refer to the pages in the Public Counsel's May 19, 2006 review of UE's December 2005 IRP filing where the listed deficiencies were identified. As the following list indicates, OPC Deficiency Nos. 7, 8, and 22 have been resolved by the agreed upon remedies in the August 4, 2006 Joint Filing of AmerenUE, Missouri Public Service Commission Staff, office of Public Counsel, Missouri Department of Natural Resources and Sierra Club et.al.

**1. 4 CSR 240-22.010(B) - Failure to use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan.** The most glaring example of UE's failure to use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan was the Company's decision to not include, in the existing supply-side resources that are included in each of the alternative resource plans, the 405 MWs of low cost capacity and associated energy from the Electric Energy Inc. (EEInc) coal-fired Joppa plant to which UE is entitled pursuant to the EEInc Bylaws. (pages 2-6, 13)

OPC's Recommended Remedy – UE should agree to direct its representatives on the EEInc Board of Directors to take whatever actions are necessary to ensure UE's continued access to 40% of the output from the EEInc Joppa coal-fired plant at cost-based rates. UE should agree to perform later stages of IRP analysis that include this resource within the next six months in accordance with a detailed schedule agreed upon by the parties in this case. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**2. 4 CSR 240-22.010(A) - Failure to Give Equivalent Consideration to Demand-Side and Supply-Side Resources.** (p. 6) The factors involved in UE's failure to give equivalent consideration to Demand-Side and Supply-Side resources included: (a) UE's "philosophy" about the design and implementation of energy efficiency programs (p. 6), (b) UE's failure to properly screen the \*\*

\*\* (p. 12), (c) UE's analysis of DSM was deficient because it did not assess the performance of alternative plans using all of the

DSM efficiency programs that may have been cost effective (p. 14), (d) UE did not model DSM energy efficiency programs for a sufficient period of time (only 3 years of DSM energy efficiency program implementation was modeled during the 20 year planning horizon) to be able to accurately assess the full long-term value of adding DSM efficiency programs under base case conditions and under the greenhouse gas scenarios (p. 14), (e) modeling efficiency and demand response programs separately would have provided valuable information about the risk mitigation benefits of the different types of programs and the impact on average rates and PVRR of the different types of programs (p. 14), and (f) UE's analysis shows it would be cost effective to implement DSM programs but the Company failed to create an implementation plan that includes a schedule for implementing the programs. (p. 16)

OPC's Recommended Remedy – UE should agree to (1) follow the requirements of the IRP rule even when those requirements are in conflict with UE's "philosophy" about the design and implementation of energy efficiency programs and (2) perform the additional analysis and modeling necessary to remedy the deficiencies described above in items (b) through (f) within the next six months in accordance with a detailed schedule agreed upon by the parties in this case. UE should also agree to work closely with the parties to avoid similar deficiencies for this supplemental analysis and in its 2008 filing. One specific area where UE should agree to work closely with the parties to avoid similar deficiencies is in the process of issuing RFPs for DSM consulting assistance and the process of selecting a DSM consultant.

**3. 4 CSR 240-22.040(1) - Failure to identify least-cost wind resource.** UE included some renewable resources in its supply side screening but, for unspecified reasons, instead of using cost data for the most cost effective wind installations within the region, UE chose to limit its analysis to the costs of installing and operating wind turbines in Missouri, even though it is widely known that some of the states surrounding Missouri have proven wind characteristics that are superior to Missouri. This is one of the factors that limited the performance of alternative plans containing wind in integrated and risk analysis. (p. 9)

OPC's Recommended Remedy – UE should agree to perform analyses to identify wind resources that are likely to have the lowest delivered cost of energy and perform later stages of analysis that include this resource within the next six months in accordance with a detailed schedule agreed upon by the parties in this case. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**4. 4 CSR 240-22.040(2)(B)2 - Failure to specify, for each pollutant identified pursuant to paragraph (2)(B)1, at least two (2) levels of mitigation that are more stringent than existing requirements which are judged to have a nonzero probability of being imposed at some point within the planning horizon.** OPC DR Nos. 557 and 558 asked UE to specify where the information could be found that satisfies the

requirement in 22.040(2)(B)2 and UE's response again referred to Appendix 1 in Document 4. In this case, the information was not there and OPC believes it was not included anywhere in the UE IRP filing and that UE is not in compliance with this provision of the rule. (p. 10)

OPC's Recommended Remedy – UE should agree to specify, for each pollutant identified pursuant to paragraph (2)(B)1, at least two (2) levels of mitigation that are more stringent than existing requirements which are judged to have a nonzero probability of being imposed at some point within the planning horizon. The specified levels of mitigation should be utilized in UE's Probable Environmental Cost calculations. These calculations should be used in later stages of analysis as required by the rule within the next six months in accordance with a detailed schedule agreed upon by the parties in this case. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**5. 4 CSR 240-22.040(2)(B)3 - Failure to specify, for each mitigation level identified pursuant to paragraph (2)(B)2., a subjective probability that represents utility decision makers' judgment of the likelihood that additional laws or regulations requiring that level of mitigation will be imposed at some point within the planning horizon.** OPC DR Nos. 557 and 558 asked UE to specify where the information could be found that satisfies the requirement in 22.040(2)(B)2 and UE's response again referred to Appendix 1 in Document 4. In this case, the information was not there and OPC believes it was not included anywhere in the UE IRP filing and that UE is not in compliance with this provision of the rule. (p. 10)

OPC's Recommended Remedy – UE should agree to specify, for each mitigation level identified pursuant to paragraph (2)(B)2., a subjective probability that represents utility decision makers' judgment of the likelihood that additional laws or regulations requiring that level of mitigation will be imposed at some point within the planning horizon. The specified subjective probabilities for each of the specified levels of mitigation should be utilized in UE's Probable Environmental Cost calculations. These calculations should be used in later stages of analysis as required by the rule within the next six months in accordance with a detailed schedule agreed upon by the parties in this case. The documentation of the chosen subjective probabilities and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**6. 4 CSR 240-22.040(2)(B)4 - Failure to estimate, for each supply-side resource, the probable environmental cost for the supply-side resource as the joint cost of simultaneously achieving the expected level of mitigation for all identified pollutants emitted by the resource.** (p. 10)

OPC's Recommended Remedy – UE should agree to estimate, for each supply-side resource, the probable environmental cost for the supply-side resource as the joint cost of simultaneously achieving the expected level of mitigation for all identified pollutants emitted by the resource. These calculations should be used in later stages of analysis as required by the rule within the next six months in accordance with a detailed schedule agreed upon by the parties in this case. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**7. 4 CSR 240-22.050(1), 4 CSR 240-22.050(2), and 4 CSR 240-22.050(4) - Failure to identify, screen, and estimate the technical potential of end use measures.**

**This deficiency has been resolved** by the agreed upon remedy in the August 4, 2006 Joint Filing of AmerenUE, Missouri Public Service Commission Staff, office of Public Counsel, Missouri Department of Natural Resources and Sierra Club et.al.

**8. 4 CSR 240-22.050(6) - Failure to perform the required activities and elements of the demand-side program planning and design process.**

**This deficiency has been resolved** by the agreed upon remedy in the August 4, 2006 Joint Filing of AmerenUE, Missouri Public Service Commission Staff, office of Public Counsel, Missouri Department of Natural Resources and Sierra Club et.al.

**9. 4 CSR 240-22.050(7) - Failure to follow the required procedure for the cost effectiveness screening of potential demand-side programs.** Public Counsel believes UE's consultant failed to properly screen the \*\*

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\*\* (p. 12)

OPC's Recommended Remedy – UE should agree to perform cost-effectiveness screening of Residential Air Conditioning programs \*\*

**\*\*** and if this type of program passes the screening test, perform later stages of analysis that include this resource within the next six months in accordance with a detailed schedule agreed upon by the parties in this case. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies for its supplemental analysis and in its 2008 filing. One specific area where UE should agree to work closely with the parties to avoid similar deficiencies is in the process of issuing RFPs for DSM consulting assistance and the process of selecting a DSM consultant.

**10. 4 CSR 240-22.060(1) and 4 CSR 240-22.060(3) - Failure to include all existing low cost resources in all of the alternative plans that were developed.** UE's failure to continue to include capacity and energy from the EEInc Joppa plant as an existing supply-side resource was a flaw that was common to all of the alternative resource plans that UE analyzed in its IRP report. This flaw created deficiencies in subsequent stages of UE's analysis because the Company assembled resource plans that included supply and demand-side additions to existing resources that were below the level that should have been used as the starting point for assembling plans due to UE's exclusion of the share of the Joppa plant output to which it is entitled. (p. 13)

OPC's Recommended Remedy – The analysis, modeling, decision-making and other tasks prescribed in 4 CSR 240-22.060 and 4 CSR 240-22.070 should be re-done, within the next six months in accordance with a detailed schedule agreed upon by the parties in this case, to reflect the share of the output from the Joppa plant to which UE is entitled to utilize. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**11. 4 CSR 240-22.060(1) and 4 CSR 240-22.060(3) - Failure to include a sufficient level of wind installed capacity in all of the alternative plans that were developed.** UE's analysis of wind was deficient because it did not assess the performance of alternative plans using the lowest cost wind resources available in the region and because UE did not model enough wind capacity (only 100 MWs of capacity was modeled) to be able to accurately assess the value of adding wind to its generation portfolio of 10,000 MWs of supply resources. UE would need to model at least 300 to 500 MWs of wind to have a valid assessment of the value of wind under base case conditions and under the greenhouse gas scenarios. (p. 13)

OPC's Recommended Remedy – The analysis, modeling, decision-making and other tasks prescribed in 4 CSR 240-22.060 and 4 CSR 240-22.070 should be re-done, within the next six months in accordance with a detailed schedule agreed upon by the parties in this case, to include alternative plans with 300 to 500 MWs of installed wind capacity.

The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**12. 4 CSR 240-22.060(1) and 4 CSR 240-22.060(3) - Failure to model DSM efficiency programs for a sufficient period of time to properly assess the costs and risk mitigation benefits of these programs.** UE did not model DSM energy efficiency programs for a sufficient period of time (only 3 years of DSM energy efficiency program implementation was modeled during the 20 year planning horizon) to be able to accurately assess the full long-term value of adding DSM efficiency programs under base case conditions and under the greenhouse gas scenarios. (p. 14)

OPC's Recommended Remedy – The analysis, modeling, decision-making and other tasks prescribed in 4 CSR 240-22.060 and 4 CSR 240-22.070 should be re-done, within the next six months in accordance with a detailed schedule agreed upon by the parties in this case, to include a substantially longer implementation time period for DSM efficiency programs. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**13. 4 CSR 240-22.060(1) and 4 CSR 240-22.060(3) - Failure to model DSM efficiency programs and DSM demand response programs separately in alternative plans that included DSM.** OPC does not dispute the value of modeling both DSM efficiency programs and DSM demand response programs together in alternative plans. However, especially given UE's "philosophy" (see discussion in the introduction section OPC's UE IRP deficiency report) regarding incentive-based energy efficiency programs and UE's statement that it "does not intend to offer giveaways in the form of rebates and 'freebies' to achieve instant results," the Company's modeling should have been more in depth in this area so it could discover the foregone benefits associated with its stated intentions regarding the type of DSM programs that it will not implement. Modeling efficiency and demand response programs separately would also provide valuable information about the risk mitigation benefits of the different types of programs and the impact on average rates and PVRR of the different types of programs. (p. 14)

OPC's Recommended Remedy – The analysis, modeling, decision-making and other tasks prescribed in 4 CSR 240-22.060 and 4 CSR 240-22.070 should be re-done, within the next six months in accordance with a detailed schedule agreed upon by the parties in this case, to include modeling DSM efficiency and demand response programs in separate alternative plans. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and

other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**14. 4 CSR 240-22.060(1) and 4 CSR 240-22.060(3) - Failure to Construct Alternative Plans Containing Both DSM and Renewable Resources.** UE's failure to create at least one alternative plan with both DSM and renewable resources limited the ability to obtain information from the modeling process about a combination of resources that would be expected to perform well in a greenhouse gas scenario. (p. 14)

OPC's Recommended Remedy – The analysis, modeling, decision-making and other tasks prescribed in 4 CSR 240-22.060 and 4 CSR 240-22.070 should be re-done, within the next six months in accordance with a detailed schedule agreed upon by the parties in this case, to include modeling alternative plans with both DSM and renewable resources. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**15. 4 CSR 240-22.070(2) - Failure to perform analysis required by this section of the rule for each of the uncertain factors listed in (A) – (L) of 4 CSR 240-22.070(2).** Document No. 2 (Filing Requirements) of UE's IRP report refers the reader to Sections 4 and 8 of Document No. 3 and Section 5 of Document No. 9 for information that complies with this requirement. OPC is unable, however, to locate sections of UE's filing where all of the above uncertain factors have been assessed. (p. 14)

OPC's Recommended Remedy – The analysis prescribed in 4 CSR 240-22.070(2) should be performed and clearly documented for each of the uncertain factors listed in (A) – (L) of 4 CSR 240-22.070(2). Once this analysis is complete, the analysis required by other sections of other sections of 4 CSR 240-22.070 which are dependant upon the results of the analysis required by 4 CSR 240-22.070(2) should be re-done. Both of these steps should be completed within six months in accordance with a detailed schedule agreed upon by the parties in this case. The documentation of this additional analysis and the selection of a preferred resource plan and development of contingency and implementation plans to reflect the additional analysis associated with this remedy and other remedies should be filed within nine months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**16. 4 CSR 240-22.070(9) - Failure to create an implementation plan for DSM programs.** UE's analysis shows it would be cost effective to implement DSM programs but the Company failed to create an implementation plan that includes a schedule for implementing the programs. (p. 15)

OPC's Recommended Remedy – Once UE has performed all of the additional analysis and made the decisions necessary to address all of the other recommended remedies, it should file a DSM implementation plan that fulfills the requirements of items (A) – (D)

in 4 CSR 240-22.070(9). This filing should take place within 9 months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**17. 4 CSR 240-22.070(9) - Failure to explicitly identify an implementation plan for installing or enhancing emission control equipment.** The Company has plans for construction projects at its major generating units to install emission control equipment but there is no schedule in the implementation plan section of Document No. 3. (p. 15)

OPC's Recommended Remedy – Once UE has performed all of the additional analysis and made the decisions necessary to address all of the other recommended remedies, it should file a environmental compliance implementation plan that fulfills the requirements of items (A) – (D) in 4 CSR 240-22.070(9). This filing should take place within 9 months. UE should also agree to work closely with the parties to avoid similar deficiencies in its 2008 filing.

**18. 4 CSR 240-22.070(10)(C) - Failure to specify the ranges or combinations of outcomes for the critical uncertain factors and explain how limits were determined.** Page 49 of Document No. 2 states that the information required can be found in Section 8 of Document No. 3 and Section 5 of Document No. 9 but Public Counsel is unable to locate all of the information necessary to comply with this provision of the rule in those two sections. Even if the information did exist in those two sections, the IRP filing would be very poorly organized if it was necessary to look in separate sections in separate volumes to find the required information. (p. 16)

OPC's Recommended Remedy –UE should perform the analysis necessary to specify the ranges or combinations of outcomes for the critical uncertain factors and explain how limits were determined as required by 4 CSR 240-22.070(10)(C). A filing that that includes UE's specification of the ranges or combinations of outcomes for the critical uncertain factors and its explanation of how limits were determined should take place within 9 months. UE should also agree to work closely with the parties to avoid similar deficiencies for this section in its 2008 filing.

**19. 4 CSR 240-22.070(10)(D) - Failure to specify a set of contingency options for the critical uncertain factors as part of an officially adopted resources acquisition strategy.** This is yet another area where UE just states on page 49 of Document No. 2 that the information required can be found somewhere within the 10 pages of a section (Section 8) of Document No. 3. Once again, Public Counsel must state that it is unable to locate all of the information necessary to comply with this provision of the rule in the referenced section. (p. 16)

OPC's Recommended Remedy – Once UE has performed all of the additional analysis and made the decisions necessary to address all of the other recommended remedies, it should file a contingency options plan that fulfills the requirements of 4 CSR 240-22.070(10)(D). This filing should take place within 9 months. UE should also agree to work closely with the parties to avoid similar deficiencies for this section in its 2008 filing.

**20. 4 CSR 240-22.070(10)(E) - Failure to create and provide full documentation of a credible process for monitoring the critical uncertain factors and reporting to managers/officers.** Page 49 of Document No. 2 includes about a half page of information that UE has provided in an attempt to comply with this provision of the rule. It states that a number of groups or departments within the Ameren HoldCo structure will be monitoring critical uncertain factors and reporting to the “Resource Planning Committee.” Public Counsel has doubts as to whether this committee actually exists. OPC DR No. 570 (See Attachment 1) asked UE to identify the member of this committee and UE was unable to identify a single member. UE’s response to this DR included an organization chart where nearly all the boxes were encircled by a dashed line to indicate that the boxes (departments and divisions of the Ameren HoldCo) were either part of, or encircled by the “Resource Planning Committee.” As a result, OPC is still wondering which specific individuals at UE have the authority to direct the implementation of contingency options when the specified limits for uncertain factors are exceeded. (While UE has subsequently indicated that the “Resource Planning Committee” is a functioning committee with actual members, it has never updated OPC DR No. 570 to show who those members are. UE has also indicated that there are no documents created as part of the functioning of this committee because the committee only uses “blackboards” for written communications.) (p. 16)

OPC’s Recommended Remedy – UE needs to create a credible process for monitoring the critical uncertain factors and reporting to managers/officers that fulfills the requirements of 4 CSR 240-22.070(10)(D). UE should supplement its IRP filing within 3 months to provide full documentation demonstrating that it has created a credible process for monitoring the critical uncertain factors and reporting to managers/officers. UE should also agree to work closely with the parties to avoid similar deficiencies for this section in its 2008 filing.

**21. 4 CSR 240-22.080(1)(D) - Failure to provide verification that the resources acquisition strategy has been officially approved by UE.** OPC DR No. 553 asked UE to “provide documentation of the UE Board of Directors approval [see UE’s reference to Board of Directors approval on page 2 of Document No. 2] of ‘the Company’s resource acquisition strategy, consisting of its preferred resource plan and implementation plan.’” UE’s response indicated that the Ameren HoldCo approved the plan at its October 14, 2005 meeting. (p. 18)

The paragraph under 22.080 (1)(D) on page 2 in Document No. 2 includes the statement that “the Company’s resource acquisition strategy, consisting of its preferred resource plan and implementation plan, was approved by its Board of Directors and reviewed by its Executive Council.” OPC DR No 554 asked UE to “identify the members of the UE Executive Council and provide a copy of all presentation made to, and documents reviewed by, the UE Executive Council in association with the Executive Council’s review of the Company’s resource acquisition strategy.” UE’s response stated that “there is no UE Executive Council” and that the Executive Council referred to was the Ameren

HoldCo Executive Council. Thus it appears that UE has never approved of the resource acquisition strategy as required by the rule. (p. 18)

OPC's Recommended Remedy – (p. 18) UE should either provide verification that the resource acquisition strategy in its December 2005 IRP filing was approved by UE prior to the filing or an acknowledgement that the resource acquisition strategy had not been approved by UE prior to the filing, as soon as it is able to make this determination. When UE completes the additional analysis associated with all of the other remedies and proceeds to develop a resource acquisition strategy, it shall provide verification that this strategy has been formally approved by the UE board of directors, a committee of senior UE management, an officer of UE or other responsible party who has been duly delegated the authority to commit UE to the course of action described in the resource acquisition strategy. This verification should be included in the supplemental IRP filing made by UE within 9 months. UE should also agree to work closely with the parties to avoid similar deficiencies for this section in its 2008 filing.

**22. 4 CSR 240-22.080(7) - Failure to make workpapers and other documentation available to Public Counsel as required by the rule.**

**This deficiency has been resolved** by the agreed upon remedy in the August 4, 2006 Joint Filing of AmerenUE, Missouri Public Service Commission Staff, office of Public Counsel, Missouri Department of Natural Resources and Sierra Club et.al.



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**TO:** Rick Voytas  
**FROM:** Ryan Kind  
**SUBJECT:** Follow-up to July 19, 2005 meeting with Staff and Ameren regarding IRP waivers  
**DATE:** August 9, 2005

This letter is intended to serve two purposes. First, it documents Public Counsel's understanding of what occurred at the July 19<sup>th</sup> meeting with respect to UE's possible waiver requests in the areas of Supply-Side Resource Analysis and Demand-Side Resource Analysis. Second, this letter follows up on some of the "to do list" items from the meeting that are still outstanding.

During the July 19<sup>th</sup> meeting, Ameren, Staff and Public Counsel discussed the areas of Forecasting, Demand-Side Analysis, and Supply-Side Analysis where Ameren has indicated that it will be seeking waivers from the IRP rule. This discussion included the two demand-side screening analysis reports (Screening Analysis of Demand-Side Management (DSM) Programs and Screening Analysis of Demand-Response Programs) produced by Ameren's consultant, Christensen Associates Energy Consulting, LLC (Christensen Associates). In the demand-side area, this memo addresses only the DSM screening report and Public Counsel's understanding of how Ameren intends to use the results of the screening process described in that report.

At the meeting, Ameren would not commit to bring any of the programs described in the DSM screening report into its integrated and risk analysis using the MIDAS software. Ameren's apparent rationale for not doing this is the conclusion in the DSM screening report (for example, see page 30) that these energy efficiency programs would not have substantial impacts on reducing growth in demand (kW) and could possibly lead to rate increases for non-participants. Public Counsel believes this rationale is not consistent with the policy objectives of the IRP rule for considering and analyzing demand-side efficiency measures on an equivalent basis with supply-side alternatives and using minimization of the present value of revenue requirements (PVR) as the primary selection criterion in choosing the preferred resource plan.

Public Counsel also has concerns with the qualitative screening of DSM "best practices" that was performed prior to performing quantitative analysis and screening of DSM programs. This qualitative screening of DSM programs led Christensen Associates to exclude many of the "best practice" DSM programs that could have proven to be cost effective and/or contributed to the robustness of a resource

plan for UE. Programs where no quantitative analysis and screening was performed included Commercial and Industrial new construction programs, Residential audits of existing homes, Residential AC efficiency programs that include incentives for properly-sized new units and contractor training, and Building Operator Certification (BOC) programs. When I noted Public Counsel's concerns about the limited range of DSM programs that were screened quantitatively by Ameren's consultant, Mr. Voytas responded that it was "too late" now to screen additional programs for the IRP filing that UE will be making in December.

There was one additional suggestion that I made at the meeting for resolving differences between Ameren and OPC over whether UE should be granted a waiver from some of the DSM requirements in the rule based on its alternative "best practices" approach and the work on that approach performed by Christensen and Associates. I stated that OPC would be willing to commit to having a series of meetings to work together with Ameren and others in an effort to develop a comprehensive portfolio of DSM programs, with the goal of developing a "best practices" approach where we would be comfortable with waiving some of the requirements in the Demand-Side Resource Analysis section of the rule. Mr. Voytas' response to this suggestion gave me the impression that Ameren was not very enthusiastic about this idea. Also, Mr. Voytas' remark that Ameren believed it was now "too late" to screen additional programs indicates that it would be difficult to make this suggestion work to the satisfaction of all interested parties.

In the area of supply-side analysis, there appeared to be only one item where UE would likely be requesting a waiver from the IRP rule after our discussions on July 19<sup>th</sup>. This is item number (5) in the Supply-Side Resource Analysis section of the rule which requires the utility to "identify and evaluate potential opportunities for new long-term power purchases and sales, both firm and non-firm, that are likely to be available over all or part of the planning horizon." At the meeting, Mr. Voytas stated that he did not want to send a formal RFP to address the "purchase" aspect of this item because he believes respondents are not likely to take this or future RFPs seriously unless there is some degree of certainty that UE would actually acquire resources pursuant to the RFP. I stated at the meeting that this was not the experience we were having with other regulated Missouri utilities and that Public Counsel would have serious concerns with UE pursuing self-build options that were more costly than power purchase or joint participation opportunities that we see in responses that other Missouri utilities receive to their power supply RFPs. After some additional discussion between the Company, Staff and OPC, Mr. Voytas stated he would seek the approval of Mr. Moehn for an alternative approach to satisfying the "purchase" aspect of this item in the rule.

The alternative approach to a formal RFP discussed at the meeting was for Ameren to work together with the Staff and OPC to develop a letter (and a distribution list for the letter) that would be sent to entities that may have (1) power available or (2) an interest in joint generation projects with Ameren. It was noted at the meeting that due to Peabody's ongoing efforts to develop its Prairie State coal-fired facility in central Illinois, it would be an obvious recipient of such a letter. I stated that Public Counsel could be supportive of this alternative to a formal RFP so long as it occurred within a transparent process that is well documented. Three weeks have now passed since the meeting where this alternative was discussed and Public Counsel is still waiting to hear the results of the discussions that Mr. Voytas stated he would be having with Mr. Moehn regarding Ameren's position on this proposal.

One additional "to do list" item remaining from the last meeting is the request that I made at the meeting for Ameren to provide electronic copies of the spreadsheets in the Appendices to the two Christensen Associates reports entitled "Screening Analysis of Demand-Side Management (DSM) Programs" and "Screening Analysis of Demand-Response Programs."

cc: Lewis Mills, Michael Moehn, Tom Byrne, Steve Dottheim, Warren Wood, Lena Mantle, Bob Schallenberg