



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

September 15, 2006

FILED³

SEP 15 2006

Public Service Commission
Governor Hotel
200 Madison Street
Jefferson City, MO 65102

Missouri Public
Service Commission

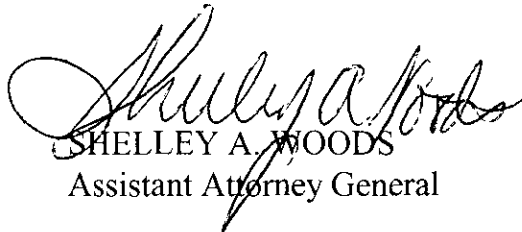
RE: *In re: Union Electric Company's 2005 Utility Resource Filing Pursuant to
4 CSR 240 – Chapter 22; Case No. EO-2006-0240*

Dear Sir/Madam:

Enclosed for filing please find an original and 9 copies of Missouri Department of Natural Resources Responsive Comments in the above-styled matter. Please stamp "filed" on the extra copy for my files. Thank you.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General


SHELLEY A. WOODS
Assistant Attorney General

SAW:mg
Enclosure
c: Counsel of Record

FILED³

SEP 15 2006

Missouri Public
Service Commission

Case No. EO-2006-0240

Missouri Department of Natural Resources Responsive Comments

COMES NOW the Missouri Department of Natural Resources and files responsive comments pursuant to 4 CSR 240-22.080(9). The Department is also taking this opportunity to comment on the Stipulation and Agreement Between AmerenUE and Staff filed in this case on August 15, 2006.

On December 5, 2005, AmerenUE filed its Integrated Resource Plan as required by 4 CSR 240-22.

On July 2, 2006, AmerenUE filed a Request for An Extension of Time for various deadlines in 4 CSR 240-22.

On July 5, 2006, the Commission issued an order extending the deadline for the filing by AmerenUE of its comments and the filing by other parties of their responses to each other's report or comments required pursuant to 4 CSR 240-22.080(9) to September 15, 2006.

On August 4, 2006, the parties to this proceeding made a "Joint Filing of AmerenUE, Missouri Public Service Commission Staff, Office of the Public Counsel, Missouri Department of Natural Resources and Sierra Club, et al" (hereafter the "Joint Filing"). This filing identified alleged deficiencies resolved

by agreement as well as deficiencies not resolved by agreement for the Office of the Public Counsel, the Department of Natural Resources and the Sierra Club. Of the 36 deficiencies listed as not resolved by the Agreement, 16 were related to demand-side resources.

On page 4 of the Joint Filing, there is an incorrect rule reference in Paragraph 7 that currently reads "AmerenUE has reached agreement with DNR to resolve the following alleged deficiencies:B. 4 CSR 240-22.010(2)(C) and (D)." The correct rule reference is "4 CSR 240-22.010(2)(C) and **240-22.070(10)(D).**"

The Stipulation and Agreement between AmerenUE and Staff (hereafter the "Agreement") was subsequently filed on August 15, 2006. Paragraph 29 (pg. 8) of the Agreement states that: "The Staff may file suggestions, a memorandum or other pleading in support of this Stipulation and Agreement and AmerenUE and the other parties shall have the right to file responsive suggestions, memorandum or other pleading in response."

In this filing, the Department is responding to the Agreement between AmerenUE and Staff filed on August 15, 2006, and to other parties' comments related to demand-side resources, identified as "unresolved issues" in the August 4, 2006, Joint Filing of the parties.

Staff, Office of the Public Counsel, Sierra Club and the Department identified numerous deficiencies related to AmerenUE's compliance with the rule's demand-side resource analysis requirements. These parties all specifically

identified a critical deficiency, namely that AmerenUE did not comply with 4 CSR 240-22.010(2)(A), which is the rule's "Policy Objectives" section. This deficiency is related to part of the rule's "fundamental objective" of providing "the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest....the utility shall... consider and analyze demand-side efficiency and energy management measures on an equivalent basis with supply-side alternatives in the resource planning process." 4 CSR 240-22.010(2)(A).

Demand-side resource analysis and screening is an essential component of compliance with the resource planning rule because deficiencies in this area are likely to result in incorrect estimates of program benefits, costs and market potential and the incorrect selection of candidate demand-side programs. Therefore, deficiencies in the analysis and screening of demand-side resources ripple through all subsequent steps in the planning process and call into question the selection of the preferred resource plan.

The Department also identified the following deficiencies in AmerenUE's methodologies and analysis for screening demand-side measures and programs (DSM) and the integration of these measures and programs into its resource acquisition strategy. These deficiencies are also linked to the deficiency noted above related to 4 CSR 240-22.010(2)(A):

- 4 CSR 240--22.050(3) -- Failure to document the criteria and data used to screen potential DSM programs.

- 4 CSR 240--22.050(9) and (11)(J) -- Failure to include a clear evaluation plan for DSM programs.
- 4 CSR 240-22.050 -- Failure to engage a consultant who is knowledgeable of successful utility DSM implementation and experience meeting the analysis tasks required by the IRP rules.
- 4 CSR 240-22.060(2) -- Failure to select the alternative resource plan (DSM combined with the purchase of 1,350 MW of gas-fired generation) with the lowest PVRR as the preferred resource plan.

Because of the significance of the deficiencies related to DSM and the potential effect on AmerenUE's planning process and outcome, the Department does not find the remedy agreed to by Staff and AmerenUE in Paragraphs 1, 14 and 16 of the Agreement to be adequate.

It is not an acceptable remedy to the DSM-related deficiencies identified by the Department to undertake the DSM process described in the Agreement and in Attachment A to the Agreement, which is entitled an "Outline of Tasks for DSM RFP," for a number of reasons. The most significant of those reasons is that AmerenUE makes no commitment to implement cost-effective DSM programs at any level. Instead, Item 16 provides that if the DSM process "does not result in more than four energy efficiency and five demand-response programs in AmerenUE's December 2008 filing, AmerenUE will research and document why so few demand-side programs are cost effective." This effectively would defer

any commitment by AmerenUE to DSM until 2009-2010 (after its December 2008 filing), assuming, of course, that DSM is even included in AmerenUE's preferred resource plan filed in December 2008. The Department notes that AmerenUE has already implemented its preferred resource plan filed in December 2005, which did not include DSM and consisted of the purchase of 1,350 MW of natural gas combustion turbines. The Department believes this preferred resource plan was developed based on a deficient DSM analysis and a failure to treat demand-side and supply-side resources on an equivalent basis, contrary to the plain language of the rule..

The Department believes it is essential to have an ongoing commitment to DSM programs at levels sufficient to realize energy and demand savings. Stopping and starting DSM efforts from one integrated resource planning cycle to the next will doom the DSM effort because market transformation, customer education, effective partnerships and support infrastructure for program delivery can only be built through an ongoing DSM effort. Even on a much smaller scale, the deferral of DSM program implementation until 2009-2010 would allow a time gap between the termination of AmerenUE's pilot DSM programs established pursuant to Case No. EO-2002-1 and startup of DSM programs that might be included in AmerenUE's December 2008 preferred resource plan.¹

The DSM process agreed to by Staff and AmerenUE does not assure meaningful input from Staff, much less other parties. Although the Agreement

¹ Subject to expenditures of any remaining energy efficiency program funds in the EO-2002-1 case, the Stipulation and Agreement expired on June 30, 2006.

provides for the *opportunity* for other parties' input, it does not give any assurance that the input from Staff or any non-signatory will be considered or acted upon. We believe this is a critical flaw in the process. Our concern is further heightened by the absence of AmerenUE's commitment to implement DSM programs in the Agreement, AmerenUE's stated position in opposition to certain types of energy efficiency programs² and its deficient treatment of DSM in its 2005 filing. The Department would urge AmerenUE to employ a DSM process in which the company seeks to gain consensus to ensure that the process moves forward.

The Department also questions the need to address certain issues in the projected 3-month process for Task 1 "Development and Definition of AmerenUE DSM Resource Analysis Process" that have been addressed by experienced DSM energy efficiency program consultants and are generally accepted approaches to DSM analysis used by other investor-owned electric utilities in Missouri and in other states. For example, there is already a significant amount of information that identifies 'best practices' programs and inputs, cost effectiveness screening and process and impact evaluations. There is no need to "re-invent the wheel" and to do so will only cause needless and further delay in implementing cost-effective DSM programs and meeting the objectives of the IRP rule.

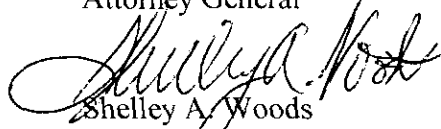
WHEREFORE, the Department respectfully requests that the Commission not approve the Agreement between AmerenUE and Staff filed by AmerenUE , as

² AmerenUE December 2005 IRP filing, Demand-Side Briefing Document, pg. 1 of 22, 2nd paragraph "AmerenUE does not intend to offer giveaways in the form of rebates and 'freebies' to achieve instant results."

modified in part by the August 4, 2006, Joint Agreement, until the deficiencies identified by the Office of Public Counsel, the Sierra Club and the Department are addressed. The Department further requests that the Commission issue its finding that AmerenUE's Integrated Resource Plan filed December 5, 2005, does not comply with the requirements of 4 CSR 240-22. Deficiencies that were identified by the Office of the Public Counsel, the Sierra Club and the Department are listed in the August 4, 2006, Joint Filing of the parties.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General



Shelley A. Woods
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
Bar No. 33525
573-751-8795
573-751-8464 (fax)
shelley.woods@ago.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 15th day of September, 2006.

Lewis Mills
Office of Public Counsel
P.O. Box 2230, Suite 650
Jefferson City, Missouri 65102

Kevin Thompson
Steve Dottheim

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Thomas Byrne
Steven Sullivan
Union Electric Company
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149

Henry B. Robertson, Esq.
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, MO 63101

Stuart Conrad, Esq.
Finnegan, Conrad & Peterson, L.C.
1209 Penntower Office Center
Kansas City, MO 64111

Lisa Langeneckert
The Stolar Partnership, LLP
911 Washington Ave., St. 700
St. Louis, MO 63101

Diana M. Vuylsteke
Bryan Cave, LLP
211 N. Broadway, Suite 3600
St. Louis, MO 63102

