

**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**

**PUBLIC COUNSEL'S RESPONSE TO ORDER DIRECTING FILING**

COMES NOW The Office of the Public Counsel and for its Response to Order Directing Filing states as follows:

1. In an order issued on September 19, 2008, the Commission directed parties to file on September 26 responses to other parties' September 12 filings. The Commission asked parties that suggest an evidentiary hearing (including Public Counsel) to address factual matters that are still in dispute.

2. In the paragraphs that follow, Public Counsel sets forth and explains the factual issues that remain to be resolved in this case. The factual issues set forth below are separated into two broad categories: (1) Those factual issues related to the findings that the Commission is required to make in this case pursuant to section (13) of 4 CSR 240-22.080 and (2) other unresolved factual issues.

**Factual Issues Related to the Findings that the Commission is Required to Make in this Case**

A. Should the Commission, pursuant to 4 CSR 240-22.080(13), issue an order finding that AmerenUE's filing pursuant to this rule demonstrates compliance with the requirements of this chapter?

No, the Commission should not issue such an order because of the major deficiencies cited by OPC and other parties that are still unresolved.

The deficiencies cited by Public Counsel and other parties that are related to determining whether AmerenUE's filing pursuant to this rule demonstrates compliance with the requirements of this chapter include the following unresolved deficiencies from the Joint Filing and Partial Stipulation and Agreement: the OPC deficiencies listed in paragraph 55 (B.) through 55(F.) on pages 20 and 21, the DNR deficiency listed in paragraph 56 on page 22 and the Sierra Club deficiency listed in paragraph 57(C.) on page 23. As noted later in this pleading, a statement made in UE's September 12 response has raised questions about its compliance with § CSR 240-22.070(6).

B. Should the Commission, pursuant to 4 CSR 240-22.080(13), issue an order finding that the utility's resource acquisition strategy meets the requirements stated in 4 CSR 240-22.010(2)(A)-(C)?

No, the Commission should not issue such an order because of the deficiencies cited by Public Counsel which show that UE has not provided a resource acquisition strategy that meets the requirements stated in 4 CSR 240-22.010(2)(A)-(C). The Commission should instead issue an order which states that UE has failed to provide a resource acquisition strategy that meets the requirements stated in 4 CSR 240-22.010(2)(A)-(C). The Commission issued an order to this effect in Case No. EO-94-360 on October 17, 1995 where it determined that KCPL's resource plan filing in that case "does not demonstrate compliance with the requirements of 4 CSR 240-22.010(2)(A)-(C)." In that order, the Commission directed KCPL to "modify its process for the selection of a preferred resource plan in connection with KCPLAN 97." The Commission told KCPL in that order that "in particular, KCPL must strictly follow 4 CSR 240-22.010(2)(B) and 22.010(2)(C)."

The deficiencies cited by Public Counsel that are related to determining whether UE has failed to provide an acquisition strategy that meets the requirements stated in 4 CSR 240-22.010(2)(A)–(C) include the following unresolved OPC deficiencies listed in paragraphs 55 (A.), 55(D.), and 55(E.) on pages 20 and 21 of the Joint Filing and Partial Stipulation and Agreement.

In addition to these deficiencies, it has come to Public Counsel’s attention as a result of reviewing UE’s September 12 pleading entitled “AmerenUE’s Response to Reports” (UE’s Response), that the Company may not have selected a preferred plan from among the alternative resource plans that were analyzed. Selecting a preferred plan from among the alternative resource plans that were analyzed pursuant to the requirements of 4 CSR 240-22.060 and sections (1) – (5) of 4 CSR 240-22.070 is explicitly required by 4 CSR 240-22.070(6). If UE failed to comply with this requirement, then its resource acquisition strategy could not include a preferred plan that minimizes the present worth of long-run utility costs as required by 4 CSR 240-22.010(2)(B) subject to other considerations as outlined in 4 CSR 240-22.010(2)(C). The factual issue of whether UE complied with 4 CSR 240-22.070(6) is explored in further detail later in this pleading.

C. Does 4 CSR 240-22.010 contain rule provisions that electric utilities are required to comply with? Public Counsel believes that this rule does contain provisions that electric utilities are required to comply with. However, the Company disputes this fact on page 13 of AmerenUE’s Response.

On page 13 of AmerenUE’s Response, the Company asserts “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.” OPC

believes that AmerenUE is incorrect in this assertion and would point out that 4 CSR 240-22.010(2) ends with the statement “this objective requires that the utility shall” and that there are several references in 4 CSR 240-22.080 to the “requirements” in 4 CSR 240-22.010(2)(A)-(C). These references appear in sections (5), (6), and (13) of 4 CSR 240-22.080 as well as in the “Purpose” section of 4 CSR 240-22.080. Also, as noted above, the Commission determined that KCPL’s 1994 IRP filing failed to comply with 4 CSR 240-22.010 because it “does not demonstrate compliance with the requirements of 4 CSR 240-22.010(2)(A)–(C).”

It should be noted that in its Order of Rulemaking adopting the IRP rules in Case No. EX-92-299, the Commission decided that the word “requirements” should be inserted in the above cited sections of 4 CSR 240-22.080 in place of the words “planning objectives.” In this same rulemaking, UE objected to the word “choosing” in 4 CSR 240-22.010(2)(B) “as not allowing utility decision makers enough discretion and flexibility in formulating the preferred resource plan.” Since UE now believes that the provisions in 4 CSR 240-22.010 do not “require any particular action to be taken by AmerenUE” it presumably is no longer concerned that the word “choosing” would limit the flexibility of the Company’s decision makers as they formulate a preferred resource plan.

#### Other Unresolved Factual Issues

D. Does UE’s preferred resource plan include a base load nuclear plant? The IRP rules require each electric utility to create a number of alternative resource plans for serving its load over the next 20 years and then subject these plans to integrated and risk analysis that will help inform the utility’s choice about its preferred resource plan to include in its IRP filing. UE analyzed dozens of alternative plans and concluded that a specific plan that included a 1600 MW Nuclear unit was the least cost and most robust plan. The last sentence on page 56 of UE’s 4

CSR 240-22.070 filing contains the statement “the NUC1600-Agg-LowNoWind alternative resource plan is the preferred option under risk neutrality and under reasonable levels of risk aversion.” On May 9, 2008 UE filed a pleading in this case entitled FILING DEMONSTRATING COMPLIANCE WITH THE COMMISSION APPROVED STIPULATION AND AGREEMENT FROM CASE NO. EO-2006-240 which included an attachment entitled “Demonstration of Compliance with Non-Unanimous Stipulation and Agreement from AmerenUE’s 2005 Chapter 22 Electric Utility Resource Plan.” At the bottom of page 51 of this attachment, UE states:

From this analysis, **a preferred alternative resource plan emerged**, the NUC1600-Agg-LowNoWind option. 4 CSR 240-22.070 Appendix A introduces a concept called risk preference, and reinforces the preferred status of the NUC1600-Agg-LowNoWind plan within all reasonable levels of risk aversion. [Emphasis added]

Yet, incredibly, on page 14 of UE’s Response, the Company asserts that “the Company’s preferred resource plan in this IRP does not include building a baseload unit...” Up until now, no party to this case has cited deficiencies with respect to UE’s compliance with 4 CSR 240-22.070(6) but it now appears that UE’s IRP filing may be deficient with respect to this critical provision in Chapter 22.

Public Counsel hopes that there is no unresolved issue with respect to whether UE’s preferred plan includes a nuclear baseload unit and that UE has inadvertently misstated its view of the facts with respect to this issue. OPC has attended nearly all of the many stakeholder meetings that the Company boasts about in UE’s response and was in attendance at the March 27, 2008 workshop where UE explained why it had chosen the NUC1600-Agg-LowNoWind alternative resource plan as its “preferred plan.” On page 5 of UE’s Response, the Company asserts that “given the openness of this [stakeholder] process, the resulting IRP should not have

contained any surprises for any of the stakeholders.” Unless UE’s statement about the Company’s preferred plan not containing a baseload unit is a mistake, Public Counsel cannot imagine a bigger surprise in UE’s IRP filing. We would also note that that UE’s assertion that its preferred plan does not include a nuclear unit is contrary to the Staff’s description of UE’s preferred plan in the “Staff Report on AmerenUE’s Integrated Resource Plan Filing.”

E. Has UE failed to choose a preferred resource plan from among the alternative resource plans that were analyzed pursuant to the requirements of 4 CSR 240-22.060 and sections (1)-(5) of 4 CSR 240-22.070 as required by 4 CSR 240-22.070(6)?

F. Does UE need a new large baseload plant within the 20 year planning horizon that UE is required to address in its IRP filing? Public Counsel does not believe that UE has done the analysis necessary to determine whether or not such a need exists. Noranda notes at pages 5 and 6 of the Comments that it filed on September 12, 2008 that UE’s preferred plan includes retiring the 800 MW coal plant at approximately the same time that it adds a 1600 MW nuclear plant. Noranda is correct to express the concern that UE may be “creating” the need for new generation by assuming that it will retire the Meramec plant prior to performing a retirement analysis that considers the benefits of extending the life of the Meramec plant.

UE appears to recognize the need to perform an in depth retirement analysis for the Meramec coal plant since this is included in its supply-side implementation plan but this analysis had not been done prior to UE’s determination that the addition of a 1600 MW nuclear plant was its least cost option. As OPC noted at page 3 of its June 19, 2008 Report (OPC Report), UE’s experience with DSM is so limited at this point that it is not able to make good estimates of the amount of load reductions that are achievable from implementing aggressive DSM programs.

The experience that UE will gain from its new DSM programs should help make its estimates of long-term DSM impacts more credible in the future.

UE, however believes its analysis clearly shows the need for additional base load power plants within about 10 years (despite the fact that it denies including such plants in its preferred plan). On page 16 of the IRP plan Summary Report that it filed with its IRP transmittal letter on February 6, 2008, UE stated “our analysis clearly shows that developing reliable electricity supplies for Missouri customers will eventually require development of baseload power plants – the estimated time frame for that is 2018 to 2020.”

G. Has UE already decided to construct a new nuclear plant? In its statements to this Commission and to the media, UE has repeatedly stated that it has not made a decision to move forward with building a nuclear plant. However, the statements that it made in its recent COLA filing with the Nuclear Regulatory Commission (NRC) where it is seeking a license to operate Callaway 2 are not consistent with those statements to this Commission. On page 1-12 in Part 1 of its July 24, 2008 license application for Callaway 2, UE states:

The [Callaway 2 project cost] estimate assumes CWIP will be included in rate base in the State of Missouri. In November, 1976, a voter referendum, Proposition 1, was passed prohibiting CWIP in rate base. It is the position of AmerenUE that AmerenUE can effectively work with the Missouri legislature and the citizens of Missouri to exempt Callaway Plant Unit 2 and its associated facilities from this regulation. **Should this effort be unsuccessful**, the construction cost estimate would likely increase and **AmerenUE would need to reevaluate its options.** [Emphasis added]

The above quote is clearly written from the perspective that a decision has already been made to move forward with Callaway 2 while indicating the UE could reconsider this decision if it is not able to get the Missouri legislature to overturn Proposition 1. In another portion of its Callaway 2 license application, UE provides its “estimated schedules for completion of construction and commercial operation.” UE states on page 1-7 of the FSAR: Chapter 1.0

section of its application that its estimated “Construction Start” date is April 2012 and the its estimated “Commercial Operation Date” is December 2017.

OPC has seen conflicting statements from UE about whether the Company has in fact already made a decision to move forward with building Callaway 2. UE’s objections to all nine of Public Counsel’s most recent data requests in this case have hindered OPC’s efforts to learn more about this unresolved factual dispute.

H. Whether UE’s filing was deficient for not analyzing the impact of financing major baseload plant additions on its credit ratings and cost of debt. Public Counsel identified deficiencies in this area at page 5 the OPC Report. At page 14 of the UE Report, the Company admits that it did not “analyze the impact of this debt accumulation upon the Company’s credit rating” and that “this is analysis that must be done prior to the Company making any decision as to whether to build any type of baseload power plant...” UE then proceeds to make the bizarre assertion that “given that the Company’s preferred resource plan in this IRP does not include building a baseload plant unit, and given that no decision has been made 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.”

I. Are OPC’s proposed remedies necessary to address the unresolved deficiencies that have been identified by OPC?

J. Are the remedies proposed by UE in the UE September 12 pleading sufficient to address the unresolved deficiencies that have been identified by OPC and other parties?

WHEREFORE Public Counsel respectfully submits this Response to Order Directing Filing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties this 26th day of September 2008.

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