Exhibit No.:	________________
Issue(s):	Demand Side Investment Mechanism
Witness/Type of Exhibit:	Kind/Surrebuttal
Sponsoring Party:	Public Counsel
Case No.:	EO-2012-0142

SURREBUTTAL TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

Case No. EO-2012-0142

May 4, 2012

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Filing to Implement Regulatory Changes Furtherance of Energy Efficiency as allowed by MEEIA	))))	**Case No. EO-2012-0142**

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am a Chief Utility Economist for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached affidavit are true and correct to the best of my knowledge and belief.

Ryan Kind

Ryan Kind

Subscribed and sworn to me this 4th day of May 2012.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 23, 2013
Cole County
Commission #09754037

Jerene A. Buckman

Jerene A. Buckman
Notary Public

My commission expires August 23, 2013.

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1. INTRODUCTION AND QUALIFICATIONS

Q. Please state your name, title, and business address.

A. Ryan Kind, Chief Energy Economist, Office of the Public Counsel, P.O. Box 2230, Jefferson City, Missouri 65102.

Q. Are you the same Ryan Kind that has previously filed rebuttal testimony in this case?

A. Yes.

Q. What is the purpose of your surrebuttal testimony?

A. This testimony responds to the rebuttal testimony of certain witnesses representing the Commission Staff (Staff), Laclede Gas Company, (Laclede), MIEC, and NRDC, Sierra Club, and Renew Missouri (NRDC).

2. RESPONSE TO NRDC REBUTTAL TESTIMONY

Q. What is your overall response to the rebuttal testimony filed by NRDC witness Phil Mosenthal?

A. The testimony of Mr. Mosenthal adds substantially to the record in this case by providing analysis of a number of different aspects of UE's MEEIA Application. In particular, Mr. Mosenthal provides additional information and analysis pertaining to MEEIA application proposals of the Union Electric Company (UE or the Company) in the following areas:

- The use of gross savings instead of net savings in UE's calculation of net benefits and lost margins;
- The assumption that net-to-gross factors are equal to one;
- Formation and functions of a stakeholder collaborative:
- UE's proposal to limit much of its EM&V activities to merely verifying the number of measures that have been installed and the inadequate EM&V funding proposal that corresponds with the limited EM&V proposal;
- UE's new Technical Reference Manual (TRM);
- Shortcomings in UE's DSM portfolio and some of the program designs for proposed programs

Q. What are the key observations that Mr. Mosenthal makes regarding UE's use of gross savings instead of net savings in its calculation of net benefits and lost margins?

A. Beginning at the bottom of page 16 of his Rebuttal testimony, he states:

> …the real concern here is twofold: 1) reliance on gross savings breaks the link between estimated net benefits (that Ameren is awarded a share of) with actual net benefits to society and with actual lost margins; and 2) it introduces perverse incentives for Ameren to avoid high NTG ratio program strategies and to drive down NTG ratios.

Q Do you agree with this observation?

A. Yes. The Commission's MEEIA rules prescribe a "net shared benefits" incentive mechanism that is to be used to incentivize utilities so that their interest is aligned with the interest of customers in having cost effective DSM programs that are implemented in an effective and efficient manner. In order for this incentive mechanism to achieve the desired outcomes, the incentive payments need to be based on outcomes (net reductions in energy (kWh) and demand (kW)) that are actually achieved. In other words the incentive payments should be based on the best estimates of the net load reduction impacts where these impacts are calculated by applying verified estimates of NTG ratio to verified estimates of gross impacts.

UE has proposed that it be permitted to have two separate utility incentive components in its DSIM (one to collect lost margins and the other as a performance incentive). Neither of these incentive mechanisms will properly align the interests of the Company and its customers if they calculate incentive payments based on the gross impacts instead of the net impacts of approved programs. While OPC opposes UE's proposal for an incentive component designed to collect 100% of lost margins on both policy and legal grounds, the Commission should be aware that this incentive component will likely collect more than 100% of UE's lost margins if the incentive payments are based on gross impacts rather than net impacts. This would occur because the most common reason for NTG ratios to be less than one is customers who have participated in a utility program and received an incentive even though they would have made the same choice for a more efficient measure (e.g. appliance or building shell enhancement) if they had not been offered the utility incentive. Customers who behave in this manner are referred to as "free riders" and including their energy efficiency related load reductions in the load reductions and corresponding lost margins will improperly inflate the incentive payments received by UE under its proposal.

The other utility incentive component of UE's DSIM that is intended to actually incentivize good performance will also over-compensate the Company if the incentive payments are calculated based on gross rather than net load reduction impacts for the same reasons described in the above paragraph. When these two incentive components are combined, they create a perverse incentive for UE to not design and implement programs in a manner that reduces NTG ratios and drives net impacts towards the level of gross impacts. This occurs because if both mechanisms rely on gross impacts for the calculation of incentive payments, the utility's incentive payments under the performance incentive are unaffected by poor NTG ratios while the failure to account for poor NTG ratios in the lost margin component means that UE could be compensated for lost margins that are not the result of its approved DSM programs because they are attributable to free riders.

Another important usage of NTG ratios as part of a DSIM is in the calculation of the DSIM utility lost revenue requirement. OPC proposed in its rebuttal testimony that the Commission approve use of a lost revenue component of a DSIM. This lost revenue component may over collect lost revenues from customers if the amount of the shortfall of revenues for covering UE's fixed costs is based on a revenue shortfall calculation that reflects the gross impacts of usage reductions resulting from UE's approved demand-side programs, rather than the net impact of usage reductions (adjusted for EM&V estimates of NTG).

Q. What are the key observations that Mr. Mosenthal makes regarding UE's proposal to assume that most NTG ratios equal one, which would allow it to take credit for gross savings?

A. Beginning at the bottom of page 19 of his rebuttal testimony, Mr. Mosenthal addresses several problems associated with this approach. The first two issues raised by Mr. Mosenthal relate to important consumer protections that should be fundamental concerns of the Commission as it considers UE's proposal to largely ignore the ignore NTG ratios. These two issues are explained beginning at the bottom of page 19 and continuing through line 14 on page 20 where he states:

> Because DSM effectively requires ratepayers to pay for efficiency programs, they should be assured of proper and transparent accounting of the actual benefits that result from this substantial public investment. Because net savings determine this actual impact compared to the reference case of no DSM programs, without evaluating and adjusting based on NTG ratios, this ability for the Commission, stakeholders and ratepayers to know if funds are being spent effectively is completely eliminated.
>
> …
>
> …in the case of Ameren, it is proposing very significant funds be awarded to the Company based on the performance of it DSM portfolio. As a result, under the Commission's obligation to ensure ratepayer funds are expended prudently determining and accounting for net savings is an imperative.

Q. What are the key observations that Mr. Mosenthal makes regarding the formation and functions of a stakeholder collaborative?

A. NRDC witness Mosenthal makes a number of good points about the need to form a stakeholder collaborative that would provide input to UE in a number of different areas pertaining to its proposed programs and the EM&V that would be performed in the future on those programs if they are approved and implemented. Most of his discussion of a collaborative is in the "Statewide Collaborative" section of his testimony that appears on pages 36 – 43. Public Counsel agrees with most of the analysis and recommendations that appear in this section. In particular, OPC supports the five recommendations that appear on page 42 of Mr. Mosenthal's testimony. On pages 47 and 48 of his testimony, Mr. Mosenthal states:

> I believe all collaborative stakeholders should play a significant role in establishing the priorities for evaluations and development of a comprehensive 3-year evaluation plan that balances the limited evaluation budgets with the numerous evaluation activities that could occur.
>
> …
>
> In addition, the Collaborative should play a key role in reviewing evaluation RFPs, work plans and draft deliverables and have an opportunity for substantive and timely input.

On page 70 of his testimony, Mr. Mosenthal states:

> As Ameren rolls out its programs, I recommend that Ameren engage with the Statewide Collaborative discussed above to discuss program designs in more detail and solicit stakeholder feedback on appropriate modifications for programs over time.

While OPC generally supports the recommendations in the three quotes shown above, it may be more appropriate to have a separate collaborative specific to UE to perform these functions. However, we would like to hear input from other parties on this issue before recommending that a separate UE specific collaborative is needed. The need for a separate UE specific collaborative at this time should also take into account the number of other utilities (Empire and KCPL GMO) that proceed to implementation of programs approved under the Commission's MEEIA rules.

Q. What are the key observations that Mr. Mosenthal makes regarding UE's proposal to limit much of its EM&V activities to merely verifying the number of measures that have been installed and the inadequate EM&V funding proposal that corresponds with the limited EM&V proposal?

A. On page 54 of his testimony, NRDC witness Mosenthal points out that UE's proposed use of "deemed values" can lead to savings in EM&V costs but essentially reduces the role of evaluations to a "measure verification process, which is not sufficient." Public Counsel generally agrees with the observations and recommendations made by Mr. Mosenthal in the EM&V section of his testimony on pages 43 – 54. Of course, OPC differs from NRDC in our view that information resulting from these EM&V activities should be used in implementing the utility lost revenue component of a DSIM rather than the utility incentive component of a DSIM that UE has proposed for the recovery of lost margins.

Q. Do you have any further response to the testimony provided by Mr. Mosenthal regarding EM&V?

A. Yes. One of the passages in his testimony regarding the interplay between UE's incentive proposals and its proposed streamlined EM&V process is so accurate and important that it bears repeating. At the top of page 47 in his testimony, Mr. Mosenthal responds to the question asking "How important is it to adopt your recommendations for more comprehensive impact evaluations rather than simple measure installation verification?" by stating:

> Given Ameren's proposed DSIM it is critically important. Ameren has proposed $122 million (PV) of awards based on the results of its savings. This is a substantial amount of ratepayer money, and it is therefore essential that ratepayers and stakeholders have assurance that the ultimate payments to Ameren reflect accurate estimates of savings and net benefits. To allow erroneous payments for three years before checking them is not acceptable and will likely undermine public support for DSM. I note that Ameren's total evaluation budget is only $4 million, or roughly only 3% of the customer funds that are riding on the results of these evaluations.

Q. What are the key observations that Mr. Mosenthal makes regarding UE's new Technical Reference Manual (TRM)?

A. Beginning on page 55 of his testimony, Mr. Mosenthal discusses the TRM and points out "some of the technical shortcomings of the TRM." At the bottom of page 56, he notes the valuable review that GDS performed of portions of the TRM and states "I strongly recommend that provision for additional review of this technical document be made." Beginning on page 57, Mr. Mosenthal makes a series of comments about "other significant shortcomings in the Ameren TRM" and then provides some specific examples of these shortcomings. Despite the shortcomings and specific examples of them that he cites in his testimony, he recommends that a "modified TRM" be conditionally approved for the program year 2013. OPC cannot support this recommendation unless (1) all stakeholders are satisfied with the "modified TRM" and (2) the values that are included in this TRM and used to implement any cost recovery mechanisms are subject to true up based on values in a subsequent TRM that is revised to reflect the full impact analysis from subsequent EM&V activities.

Q. What are the key observations that Mr. Mosenthal makes regarding UE's proposed DSM portfolio and the programs that are part of that portfolio?

A. The remarks and recommendations that NRDC witness Mosenthal makes in this area begin on page 64 of his testimony. Mr. Mosenthal makes a number of points about proposed programs and additional programs that UE could implement that should be considered by UE and a collaborative. He notes at the bottom of page 69 that "it is very difficult to determine whether Ameren's programs are well designed or will follow best practices given the level of detail provided." Then at the bottom of page 70, he states:

> As Ameren rolls out its programs, I recommend that Ameren engage with the Statewide Collaborative discussed above to discuss program designs in

more detail and solicit stakeholder feedback on appropriate modifications for programs over time.

Public Counsel supports this recommendation and believes that additional details of the programs should be specified prior to implementation and included on tariffs that contain the level of detail required by the Promotional Practices rule.

3. RESPONSE TO STAFF REBUTTAL TESTIMONY

Q. At the top of page 10 in his rebuttal testimony, Staff witness Mark Olighschlaeger states that he believes that Rule 4 CSR 240-20.093(G)4 makes it acceptable under the MEEIA rules for UE to "quantify a portion of its utility incentive component to be approximately equal to its projected throughput disincentive." Do you agree?

A. No. UE's proposal to "quantify a portion of its utility incentive component to be approximately equal to its projected throughput disincentive" is clearly not permitted by the rules because it could allow recovery of a larger amount of dollars from customers than is permitted under 4 CSR 240-20.093(G)1. There is nothing in the rule that permits a lost margin or lost revenue recovery mechanism to NOT be in compliance with 4 CSR 240-20.093(G)1 so long as it complies with 4 CSR 240-20.093(G)4. Clearly all provisions in the rule must be complied with unless the rule states otherwise.

Q. On page 41 of his testimony, Mr. Rogers states "This under- or over-recovery of DSM program costs from customers should be measured monthly and treated in the same manner, i.e., interest provided at a short-term interest rate, as the under- or over-recoveries of costs from customers are treated in Ameren Missouri's fuel adjustment clause." Do you agree with this recommendation?

A. Yes. This recommendation is especially important in light of UE's admission in its response to NRDC DR No. 012 that the earliest date that it may begin offering full-scale programs approved in this case is in March 2013.

4. RESPONSE TO MIEC REBUTTAL TESTIMONY

Q. On page 4 of his testimony, MIEC witness Maurice Brubaker states "There simply is no justification for spreading the costs of residential and commercial/industrial customer programs across all customer classes. Costs associated with residential customers should be assigned to and collected from only residential customers and costs associated with commercial and industrial customers should be assigned to and collected only from them." Do you agree with this statement?

A. No. There should be one very important exception to this cost allocation principle for Residential Low Income programs. Both the MEEIA rules and statute allow for Commission approval of low income programs that do not pass cost benefit tests if the Commission makes a determination that the program is in the public interest. For such programs where the Commission approves low income programs not passing the cost benefit test by determining that the program is in the public interest, the costs of the programs should be allocated to all segments of the public by allocating these costs to all customer classes. There is no reason why residential customers should bear the entire burden of paying for programs that are approved to serve a public interest purpose, even though they are not cost effective. If the entire burden of these costs were passed on to residential customers, then the rates paid by low income residential customers, who already have difficulties affording their electric service, would be increased more than they would if the costs are spread to all customer classes.

This Commission has approved low income weatherization for gas and electric utilities for almost two decades and I am not aware of a single instance where the Commission has determined that the cost of these weatherization programs should be allocated solely to residential customers. No party has provided any evidence or analysis in this case that would justify making a change in this prior Commission policy for the Low Income program that UE has proposed in this case.

5. RESPONSE TO LACLEDE REBUTTAL TESTIMONY

Q. What is your response to Laclede's rebuttal testimony in this case?

A. Laclede witness James Travis made a number of recommendations about opportunities for the joint delivery (sometimes referred to as co-delivery) of energy efficiency programs by UE together with Laclede. OPC generally supports exploring these opportunities and believes that the Commission should direct the collaborative (recommended in this testimony) to explore options for cost effective programs that could be jointly delivered by UE and Laclede. Laclede should, of course, be permitted to participate in the collaborative where these options are explored.

As noted by Laclede, the proposed residential Home Energy Performance program is one where joint delivery with Laclede should be considered. OPC does not believe that UE will be able to achieve the MEEIA goal of achieving all cost effective demand side programs without such joint delivery programs. For example, on page 95 of UE's MEEIA report it shows that it has dropped crawl space and wall insulation because of TRC results that are less than one. Could TRC scores of greater than one be achieved through joint delivery of this measure in the Home Energy Performance program if Laclede is funding a portion of the incentive costs for this measure in homes heated with natural gas? This should be further explored in the collaborative.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.