

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

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

**MISSOURI DEPARTMENT OF NATURAL RESOURCES'  
RESPONSE TO COMMISSION ORDER DIRECTING  
PARTIES TO FILE ADDITIONAL RESPONSES TO COMMENTS**

**COMES NOW** the Missouri Department of Natural Resources (DNR) and pursuant to the Order Directing Parties to File Additional Responses to Comments submits the following:

Union Electric Company d/b/a AmerenUE (AmerenUE) filed its Integrated Resource Plan (IRP) pursuant to 4 CSR 240-22 on February 5, 2008. Staff (Staff) of the Missouri Public Service Commission, the Office of the Public Counsel (OPC), the Missouri Department of Natural Resources (DNR) and the Sierra Club, Missouri Coalition for the Environment, Mid-Missouri Peaceworks and the Association of Community Organizations for Reform Now (collectively, Sierra Club), filed written comments in response to AmerenUE's IRP pursuant to 4 CSR 240-22.080.

On August 12, 2008, a Joint Filing and Partial Stipulation and Agreement was filed by AmerenUE, Staff, OPC, DNR, the Missouri Industrial Energy Consumers (MIEC), the Missouri Energy Group (MEG) and the Sierra Club. Although the parties were able to resolve several of the deficiencies set forth in the comments, several unresolved deficiencies were identified in the Agreement. One deficiency identified by DNR remains unresolved.

AmerenUE filed its Response to Reports on September 12, 2008, which addressed the unresolved deficiencies as well as comments on the stakeholder process and recommendations for final resolution of this matter.

The Commission Order Directing Parties to File Additional Responses to Comments "directs the parties that contend an evidentiary hearing is necessary to explain what, if any, factual issues remain to be resolved." DNR submits the following:

**Statement of DNR Unresolved Deficiency**

The unresolved deficiency identified by DNR is set out in Paragraph 56 of the Partial Stipulation and Agreement:

4 CSR 240-22.050 (4). DNR states that AmerenUE failed to include a portfolio that represents a very aggressive approach for the achievable potential of the demand-side portfolio by leveling penetration after the first years, constraining incentives costs and other issues, which did not allow the Company to fully evaluate the impact that reductions under an aggressive portfolio could have on the magnitude of the Company's next capacity addition prior to making major commitments to that capacity addition. DNR Report, Synapse Attachment, p. 8.

DNR recommended in its June 18, 2008 filing that "AmerenUE should identify and evaluate the achievable potential from a portfolio of demand-side resources that represents a very aggressive approach to encouraging program participation ... AmerenUE should file this evaluation with the Commission no later than February 2010...to ensure that all parties, including AmerenUE, understand the impact that reductions under an aggressive portfolio may have on AmerenUE's next capacity addition before it makes any major commitments to that capacity addition." (Synapse report, p.3) AmerenUE's preferred plan in its IRP filing preserves the option of having 1200 to 1600 megawatts (MW) of nuclear capacity come on-line by 2018 or 2020, for which it would

have to make a decision on whether to proceed in late 2010 or early 2011 (AmerenUE IRP filing, 4 CSR 240-22.070.9, p. 101).

In its Response to Reports related to an OPC unresolved deficiency, AmerenUE commits that it will not make a decision on a baseload plant until at least 180 days after it files its next IRP due April 5, 2011, but that it "cannot commit that it will delay a baseload plant decision more than 180 days - for some indefinite period of time until the next IRP case is completely resolved..." (p.15) While this commitment is noteworthy and would appear to satisfy DNR's deficiency, it does not allow time for completion of the IRP process as provided for in 4 CSR 240-22, which includes the possibility of a hearing on unresolved deficiencies. While AmerenUE has agreed to delay its decision on baseload plant until after its next IRP filing, it has not agreed to delay that decision until after this Commission has had an opportunity to fully review the IRP and confirm whether it complies with 4 CSR 240-22.

It is important to determine what is included in AmerenUE's preferred resource plan. In its Response to Reports, AmerenUE states that "the Company's preferred resource plan in this IRP does *not* include building a baseload unit." (p.14) In view of the requirement of 4 CSR 22.050(6), it has been DNR's understanding that AmerenUE selected the "NUC1600-Agg-LowNoWind" alternative resource plan as its preferred resource plan. This alternative resource plan includes the addition of 1600 MW of nuclear capacity in the year 2020. The company's statement in the September 12, 2008. Response to Reports is contradicted by the following AmerenUE documents:

- AmerenUE's Demonstration of Compliance, p. 51, states that "the response to section 4 CSR 240-22.070 (5) (B) presents the cumulative distribution

function (cdf) of the difference from the best plan, in terms of the present value of revenue requirements (PVRR), as well as deciles of this cumulative probability for each of the top 18 alternative resource plans subjected to risk analysis. From this analysis, a preferred alternative resource plan emerged, the NUC1600-Agg-LowNoWind option."

- AmerenUE's response to DNR Data Request #1, p. 2, states that \*\*\*.

### **Explanation of DNR Unresolved Deficiency in Response to AmerenUE's Response to Reports Filing**

In its September 12, 2008 filing, AmerenUE states that the correct citation for the DNR's alleged deficiency is to the 2006 Stipulation. Two documents filed in this case define AmerenUE's responsibility to assess achievable potential. DNR agrees that one of these is the 2006 Stipulation cited by AmerenUE. The other is the waiver the Commission granted AmerenUE from the requirements of 4 CSR 240-22.050 (4).

The question is whether or not AmerenUE met its obligation under the waiver to "prepare an estimate of the achievable potential of programs screened as cost-effective under 4 CSR 240-22.050 (7)...An estimate of achievable potential shall be prepared for multiple portfolios of programs, where at least one portfolio represents a very aggressive approach to encouraging program participation."<sup>1</sup> In its waiver request, AmerenUE noted, "The key to the IRP process is having estimates of what is achievable, as those estimates will be central to the integration process. The most straightforward approach to

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<sup>1</sup> Attachment B to MOTION TO ESTABLISH A PROCEEDING AND REQUEST FOR WAIVERS, In re: Union Electric Company's 2008 Utility Resource Filing pursuant to 4 CSR 240 – Chapter 22, filed April 19, 2007. pp 3-4.

this need is to develop estimates of the achievable potential associated with the programs that are analyzed.”<sup>2</sup>

DNR agrees that estimates of the achievable potential are central to the integration process, but notes that these estimates are a function of the programs analyzed. If the programs as designed fall short of a very aggressive approach to achieving efficiency savings, the potential will likewise fall short. Program design is in part a function of how aggressively one chooses to pursue efficiency. Deciding *a priori* to limit incentive payments to 75 percent of incremental costs, or to assume program penetrations need not exceed certain legislative or programmatic goals will necessarily limit what the program can achieve. As noted in our previous filing, any efficiency that can be acquired at a cost lower than the cost of alternative supply-side resources is justified. At approximately 3 cents per kilowatt hour (kWh) levelized cost, the efficiency programs offered by AmerenUE are far less expensive than the nuclear baseload option that AmerenUE wishes to preserve at 7.3 cents per kWh.<sup>3</sup> The conclusion to be drawn from this is that additional efficiency resources are available and achievable and should have been included by AmerenUE as part of the portfolio of resources analyzed in the IRP.

DNR's response to particular points made in AmerenUE's Response to Reports is as follows:

On Page 19 of AmerenUE's September 12, 2008, filing, AmerenUE states that DNR's allegation refers to Energy Efficiency targets in other states as proof that AmerenUE's goals in its IRP are not aggressive. DNR's allegation is not solely based on

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<sup>2</sup> Ibid.

<sup>3</sup> AmerenUE Integrated Resource Plan, 4 CSR 240 22.040, February 2008, p. 113

energy efficiency “targets” in other states. As previously stated, several states are already achieving savings exceeding AmerenUE’s targets as filed in the IRP, including California, Massachusetts, Vermont, and Connecticut. AmerenUE has argued in the past that results from these states are not relevant to Missouri because their efficiency programs have been operating for several years. In our view, this would tend to reinforce the notion that AmerenUE’s targets for efficiency are too low. Where programs have been operating for some time, much of the savings from the least expensive and “easy” opportunities have already been captured. In Missouri, with relatively low electric rates compared to these states, we expect there to be a large amount of relatively inexpensive and easy to acquire savings for new efficiency programs to begin capturing.

AmerenUE states that “many states with Energy Efficiency targets mandated by law also have cost limitations associated with that target,” referring to information provided as Exhibit 2 to its response. Our review of the information in Exhibit 2 indicates that only one other state (Florida) besides the cited example of Illinois is even considering a rate cap. AmerenUE's exhibit includes several states not mentioned in DNR’s earlier responses (e.g., Minnesota, Iowa, Maine, and Maryland) that are aiming for efficiency savings far higher than AmerenUE by 2015 to 2017. See table below.

<b>Jurisdiction</b>	<b>Target Savings</b>	<b>Year</b>
Minnesota	1.5% per year	N/A
Iowa	1.5% per year	2008-2012
Maine	10%	2017
Maryland	15%	2015
AmerenUE	4.4%	2017

Note: Targets for Maine, Maryland and AmerenUE are cumulative, not annual.

Also on Page 19 AmerenUE suggests that there is more than one way to define the aggressiveness of a DSM portfolio. We agree that spending depth (i.e., program spending as a percentage of revenue) is one of a number of appropriate measures of the extent and intensity of DSM programming. Nevertheless, several important factors should be noted. First, the figures quoted in AmerenUE's response ("1.2% of total revenues in the first year and rises to 1.9% by the third year") include spending on Demand Response. Only 75% of this spending is for energy efficiency, meaning 0.9% to 1.4% is the more appropriate comparison. Second, most states are currently increasing their spending on energy efficiency. Comparing what AmerenUE says it will spend in 2011 with what states spent in 2006 will overstate AmerenUE's relative aggressiveness on this measure. Finally, spending should generate savings results. Spending in the early years of a program will likely be higher on a per kWh basis as program administrators build capacity, market understanding and delivery infrastructure. In the long term, actual savings are an important indicator of program success, as long as the programs remain cost-effective relative to alternative supply options.

On Page 19 in the last paragraph, AmerenUE states that a consultant has been engaged to develop a "customized supply curve" that will permit the company "to better assign costs to various levels of energy efficiency market shares." DNR views this as a positive step toward assessing achievable potential from energy efficiency programs. However, no other document filed in this case provides additional description of the methodology being used in this study or any explanation of the study's relationship to the task of assessing achievable potential. In the absence of any information about the study, its methodology and its proposed use other than the very limited information contained in

AmerenUE's Response to Reports, DNR must reserve judgment on whether this study will result in estimates of achievable potential and in particular, whether it will result in a valid estimate of achievable potential under a very aggressive approach to encouraging program participation. DNR also must reserve judgment on the appropriateness of AmerenUE's use of the study until AmerenUE demonstrates how the study results will be incorporated into its resource planning process.

If and when the Commission and parties have an opportunity to review the study, the review should include considerations of whether the study has successfully incorporated analytic "best practices" that overcome the methodological deficiencies that limited the estimate of achievable potential in the current IRP filing. These deficiencies and the agreed remedies are identified in Paragraph 27 of the Joint Filing and Partial Stipulation and Agreement in this case.

Finally, we note that in all of the discussions regarding efficiency potential, the efficiency programs proposed by AmerenUE, and the assumptions behind the IRP modeling exercises, there is a bit of disconnect with respect to time horizon. In its response, AmerenUE refers to its planned DSM spending in its 3-year plan. Clearly, the IRP process analyzes a longer timeframe. Therefore, the relevant time horizon for assessing compliance with the waiver requiring an assessment of achievable potential is equal to the time horizon used in the overall IRP process. DNR certainly understands that program planning occurs on a much shorter time-frame, consistent with AmerenUE's 3-year implementation plan, and is not suggesting that detailed program strategies are required for a significantly longer timeframe. DNR does assert that the assumptions used to assess the potential long-term savings from efficiency programs, especially for



purposes of integrated resource planning, should represent the maximum effort that can be applied over several years. This means high incentive levels, aggressive direct install programs, and no constraints on program achievement based on a pre-determined target savings or spending level beyond appropriate cost-effectiveness tests. DNR has previously stated that it does not believe AmerenUE has met the requirement to assess the achievable potential from energy efficiency in this manner. AmerenUE cannot credibly conclude that additional base-load generation will be needed in the medium-term without taking into account the option of meeting projected load requirements in part through aggressive efficiency programs.

### **DNR Consultant and Stakeholder Process**

In its Response to Reports filed September 12, AmerenUE questioned DNR's decision that it was "more appropriate to engage an outside consultant to identify alleged deficiencies after the filing was made rather than to engage that consultant during the stakeholder process." (p. 4)

DNR contracted with Synapse Energy Economics and its subcontractor Optimal Energy to assist in its analysis of AmerenUE's IRP filing. These are two well-established consulting firms specializing in energy, economic and environmental topics and in energy efficiency and renewable energy portfolio planning and management, respectively. The funding available to DNR for comprehensive review of the filing was very limited. For example, DNR's budget for consulting services was approximately one-seventh of AmerenUE's initial consulting budget for its primary DSM consultant. While DNR would have preferred to engage its consultants to assist in the stakeholder process as well

as to assist in the review of AmerenUE's IRP filing, the funds available to DNR were not sufficient to engage the consultants during both phases of IRP preparation and review.

DNR respectfully submits that the decision to concentrate limited consulting resources on post-filing review, which is the phase of the IRP process that offers an opportunity for comprehensive review of the IRP planning process and resource acquisition strategy, was appropriate because it was consistent with DNR's public responsibilities in this case. A detailed explanation follows:

- DNR agrees with AmerenUE that the stakeholder process provides an opportunity for "a truly constructive effort to help shape the filing and the plan." As noted below, DNR fully supported and participated in the stakeholder process. However, DNR does not agree with AmerenUE's somewhat dismissive characterization of post-filing review as "criticizing the filing" and "merely offering after-the-fact criticism at the end." (Response to Reports, p. 5) In DNR's view, the stakeholder process and the post-filing review served a common purpose in this case. That purpose was to facilitate the creation of an Integrated Resource Plan that complied with the requirements of the IRP rule, incorporated analysis based on valid methodology and resulted in a resource acquisition strategy that "meet[s] the requirements identified in 4 CSR 240-22.010(2)(A)–(C)." 4 CSR 240-22.080(6)–(8). Post-filing review plays an essential role in achieving this purpose because it provides the opportunity for holistic and comprehensive review of the filing. Moreover, 4 CSR 240-22.080(8) provides the opportunity to develop remedies for any deficiencies that are identified during the post-filing review.

- DNR submits that its participation in both phases of the IRP process contributed to the purposes outlined above. In its post-filing comments filed June 18, 2008, DNR included potential remedies for every deficiency that was identified. Ultimately, DNR and AmerenUE resolved all but one of the deficiencies identified. In most cases, the remedy proposed in the DNR comments was the basis for the resolution. In addition, DNR has strongly supported and fully participated in the stakeholder process. As noted in AmerenUE's Response to Reports "in addition to participating in numerous face-to-face meetings, conference calls and electronic correspondence to review and provide comments on various aspects of the analysis required by the IRP rule, staff of the department's Energy Center provided review and recommendations in AmerenUE's efforts to contract for outside expertise for DSM analysis, implementation and evaluation."<sup>4</sup> DNR devoted a significant amount of staff time to this process.
- However, as noted above, an important distinction between the post-filing phase in this IRP case and the pre-filing stakeholder process is that the post-filing phase offered an opportunity for comprehensive review of the resource planning process and resulting resource acquisition strategy. For reasons outlined below, the stakeholder process in this case did not offer an equivalent opportunity for comprehensive review.

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<sup>4</sup>Quoted by AmerenUE from page 3 of DNR's comments on AmerenUE's Demonstration of Compliance with Stipulation for Case No. EO-2006-0240. AmerenUE Demonstration of Compliance was filed May 9, 2008. DNR comments were filed June 18, 2008, and are cited hereafter as DNR's Review of Demonstration of Compliance.

- DNR's public responsibilities pertinent to this case were the basis for the department's request to intervene in AmerenUE IRP cases EO-2006-0240 and EO-2007-0409. The pertinent responsibilities set forth in §640.150, RSMo include planning for energy resource development; analyzing energy management issues; consulting and cooperating with all state and federal governmental agencies on matters of energy research and development, management, conservation and distribution; and analyzing the potential for increased use of energy alternatives and making recommendations for the expanded use of alternate energy sources and technologies. In addition, DNR's request to intervene pointed out that DNR's intervention would serve the public interest because the department would be reviewing the filing from a formal policy and planning perspective. In DNR's view, the central opportunity to meet these responsibilities is during the post-filing phase when it is possible to take a comprehensive view of the IRP process and resource acquisition strategy.
- As DNR noted in its June 18, 2008 comments, the stakeholder process should not be expected to identify and resolve all potential deficiencies and concerns related to the integrated planning process. Limitations of the stakeholder process include the following:
  - The stakeholder process, by its nature, cannot include full review of all aspects of the IRP analysis. Some issues cannot be addressed until after the IRP filing when work papers and responses to data requests become available.

- In general, a utility's full Resource Acquisitions Strategy, including all five components prescribed in 4 CSR 240-22.070(10), is not likely to be available to stakeholders until after the IRP filing; this was true for this case.
- The stakeholder process used in this case did not involve joint decision making. Stakeholders could offer suggestions, and the utility could choose to adopt stakeholder suggestions, but the utility retained ultimate decision making authority. A case in point is the development of DSM portfolios that were included in alternative resource plans. AmerenUE's DSM consultant delivered its initial version of DSM portfolios a number of weeks past the originally scheduled delivery date. On review, DNR and other stakeholders identified issues whose resolution required several rounds of revision and communication through email and conference calls. One issue raised by DNR was that initial versions of DSM portfolios produced by the consultant did not include any portfolio that met the goals for reduction in peak demand and energy growth that had been established by the Commission in its May 22, 2007 Report and Order for Case No. ER-2007-0002. Ultimately, the consultant produced a portfolio that did meet these goals; AmerenUE chose to designate this particular portfolio as "aggressive DSM" and has included it in its preferred resource plan. DNR took the position that while this particular portfolio had merit in reflecting the minimum goals set by the Commission, it did not meet the requirements of the waiver from 4 CSR 240-22.050 (4) that the Commission had granted to AmerenUE. This waiver requires the utility to prepare "at least one portfolio [that] represents a very aggressive approach to

encouraging program participation." When it became clear that consensus could not be reached on this issue through the stakeholder process, DNR chose to defer consideration of the issue so that the integrated analysis could proceed and the IRP filing deadline could be met.

- AmerenUE states in its Response to Reports that "the resulting IRP filing should not have contained any surprises for any of the stakeholders." (p. 5) However, AmerenUE's filing did include at least one major surprise. On several occasions during the stakeholder process when AmerenUE, DNR and other parties were discussing the adequacy of AmerenUE's proposed "aggressive" DSM portfolio, AmerenUE stated that in any case the utility would not make any major supply side resource decision before the completion of another round of the IRP process. During the initial post-filing period, DNR assumed that the implementation plan and resource acquisition strategy that had been filed were consistent with these assurances. However, review of the IRP filing by DNR's consultants uncovered statements in the filing that were inconsistent with the assurances previously given during the stakeholder process.<sup>5</sup> Issues of timing were subsequently discussed in the 45-day resolution period, but were not fully resolved and as noted in this filing, are a core aspect of DNR's one remaining unresolved deficiency.

For all of the reasons set out above, the DNR believes the Commission should schedule a hearing to resolve the DNR's identified deficiency set out above.

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<sup>5</sup> DNR's Review of Demonstration of Compliance, p. 4. See also Public Counsel's List of Deficiencies filed June 19, pp. 1-2.

WHEREFORE, DNR asks the Commission to accept this Response in fulfillment of the requirements of the Commission Order Directing Parties to File Additional Responses to Comments.

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#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 26th day of September, 2008.

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