

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

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's 3rd Filing to Implement) File No. EO-2018-0211
Regulatory Changes in Furtherance of Energy)
Efficiency as Allowed by MEEIA.)

AGREEMENT IN LIEU OF CHANGE REQUESTS

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), the Staff of the Missouri Public Service Commission ("Staff") and the Office of the Public Counsel ("OPC") (collectively, the "Signatories"), and submit this *Agreement in Lieu of Change Requests* ("*Agreement in Lieu*"). In support of their position, the Signatories state as follows:

INTRODUCTION

1. On October 25, 2018, several parties to this proceeding, including the Signatories, executed a *Stipulation and Agreement* ("*October 2018 Stipulation*") which contained an evaluation, measurement, and verification ("EM&V") schedule in its attached MEEIA 2019-21 Report. The *October 2018 Stipulation* was approved by the Missouri Public Service Commission ("Commission") on December 5, 2018. In accordance with the approved EM&V schedule, the parties engaged the process for plan year 2020 ("PY 20"). This informal stage of the process included the circulation of a draft PY 20 report by the independent, third-party evaluator seventy (70) days after the plan year ended, the submission of comments on the report by interested stakeholders, and the hosting of a conference call to discuss the comments received.

2. Consistent with this schedule, on March 11, 2021, the independent, third-party evaluator, Opinion Dynamics, circulated volumes 2, 3 and 4 of its Draft PY 20 EM&V Report to stakeholders. Opinion Dynamics circulated volume 1 of its Draft PY 20 EM&V Report on March

18, 2021. Ameren Missouri submitted its comments on the report to Opinion Dynamics and the other stakeholders on May 6, 2021, and the Commission's auditor, Evergreen Economics, also submitted comments to Opinion Dynamics and the stakeholders on May 6, 2021. OPC held a meeting to review comments on June 3, 2021 and their planned responses.

3. In accordance with the schedule, on June 11, on behalf of the independent evaluator, Ameren Missouri submitted the *Ameren Missouri Program Year 2020 Annual EM&V Report* ("*PY 20 EM&V Report*"). On June 24, 2021, the Commission's independent auditor submitted its *Independent EM&V Audit of the Ameren Missouri PY 2020 Program Evaluations – Final Report* ("*PY 20 Auditor Report*"). Staff submitted a Change Request on July 1, 2021; the Commission Ordered all comments be submitted by July 15, 2021, and Ameren Submitted Comments on Change Request on July 15, 2021.

4. While the Signatories do not believe a full Commission proceeding is necessary to address the points raised in the *PY 20 Auditor Report* or in the comments provided by Ameren Missouri during the informal stage of the process, they do feel that certain matters be reserved for additional discussion. Accordingly, the Signatories are entering into this *Agreement in Lieu* described below, and request the Commission find these compromises constitute a fair and reasonable resolution to the PY 20 EM&V process.

SPECIFIC TERMS AND CONDITIONS

5. Recognition of the Perspectives of the Evaluator and Independent Auditor. The Staff of the Missouri Public Service Commission and Ameren Missouri recognize that Opinion Dynamics and Evergreen Economics are both respected experts in the field of evaluation, measurement, and verification of energy efficiency programs. Given the complexity of the determination of free ridership and the unprecedented events of the pandemic, it is not entirely

unexpected that two experts could reach different conclusions on the impact of COVID-19. Opinion Dynamics relied on the results of the research they completed with both participants and trade allies, regarding the impact of COVID-19 on decision making. As part of this research, Opinion Dynamics identified gaps in the current free-ridership algorithms. At the same time, Evergreen raises important conceptual considerations regarding the nature of free-ridership.

6. Business Program Free Ridership. Therefore, and to address the points raised by both Opinion Dynamics and Evergreen Economics, Opinion Dynamics will conduct new primary surveys in 2021 to reassess free ridership in the Business Custom, Standard and Retro-commissioning programs rather than use PY2019 and PY2020 results as originally included in the PY2021 evaluation plan. The surveys will be revised, in coordination with Ameren Missouri, Regulatory Stakeholders, and the Independent Auditor, to include additional questions or surveys needed to cover issues related to the impacts of COVID-19 on project cancellations and delays. This additional research will be funded through MEEIA 2019-2021 contingency funds.

7. Other Concerns Raised by the Independent Auditor. All concerns other than the COVID-19 adjustment to free ridership raised by the Independent Auditor will be addressed as part of the PY2021 evaluation plan.

8. Earnings Opportunity. Ameren Missouri agrees to a \$100,000 reduction to its PY 2020 earnings opportunity, to be reflected in its next Rider Energy Efficiency Investment Charge ("EEIC") filing.

9. Throughput Disincentive. The Company will rely on the final and filed *PY 20 EM&V Report* for the purposes of calculating its throughput disincentive as part of the Energy Efficiency Investment Charge rider.

10. Plan Year 2021 ("PY 21") Evaluation. The Staff of the Missouri Public Service Commission and Ameren Missouri also recognize that items raised throughout the 2020 evaluation have implications for the PY 21 Evaluation. Therefore, to prospectively address concerns, and for the purposes of the PY 21 evaluation, parties agree that:

- The Early Replacement (ER) vs. Replace on Fail (ROF) parameters used within the Residential HVAC evaluation will use the lesser of a deemed 85/15 (ER/ROF) split or the actual year-end results from program tracking data, based on the current failure definition using the compressor operation status.¹
- Consistent with the current Technical Resource Manual (TRM), HVAC-related equipment incentivized through the business program for indoor agriculture facilities will use an HVAC end-use load shape for purposes of the PY21 evaluation.² Opinion Dynamics will develop additional PY21 evaluation plans to assess the net-to-gross of this emerging business segment.
- The cutoff for demand response enrollment will be moved from the end of the Program Season in year 3 (September 2021) to the end of the final Program Season (currently 2022). To that end, and as necessary, Opinion Dynamics will develop evaluation plans to address test events that are held outside of the event season.

¹ "Lesser of" refers to the value for the early replacement estimate.

² Due to legislative changes in the state of Missouri that were introduced since the initial MEEIA 2019-21 filing, indoor Agriculture grow facilities have become an important segment within the Business portfolio.

GENERAL PROVISIONS

11. This *Agreement in Lieu* is being entered into solely for the purpose of settling the issues specifically set forth above, and represents a settlement on a mutually-agreeable outcome without resolution of specific issues of law or fact. This *Agreement in Lieu* is intended to relate *only* to the specific matters referred to herein; no Signatory waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein. No party will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this *Agreement in Lieu*. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this *Agreement in Lieu* in any other proceeding, regardless of whether this *Agreement in Lieu* is approved.

12. This *Agreement in Lieu* has resulted from extensive negotiations, and the terms hereof are interdependent. If the Commission does not approve this *Agreement in Lieu*, approves it with modifications or conditions to which a party objects, or issues an order in another Commission case that negates its approval or conditions or modifies the *Agreement in Lieu* in a manner to which any party objects, then this *Agreement in Lieu* shall be null and void, and no Signatory shall be bound by any of its provisions.

13. If the Commission does not approve this *Agreement in Lieu* unconditionally and without modification, and notwithstanding its provision that it shall become void, neither this *Agreement in Lieu*, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.080 RSMo 2016 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this *Agreement in*

Lieu had not been presented for approval, any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this *Agreement in Lieu*, shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

14. If the Commission unconditionally accepts the specific terms of this *Agreement in Lieu* without modification, the Signatories waive, with respect only to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2016; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2016; (3) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2016; and (4) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2020. These waivers apply only to a Commission order respecting this *Agreement in Lieu* issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this *Agreement in Lieu*.

15. This *Agreement in Lieu* contains the entire agreement of the Signatories concerning the issues addressed herein.

16. This *Agreement in Lieu* does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the *Agreement in Lieu's* approval. Acceptance of this *Agreement in Lieu* by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this *Agreement in Lieu* is intended to impinge or restrict

in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

17. The Signatories agree that this *Agreement in Lieu*, except as specifically noted herein, resolves all issues related to these topics, and that the agreement should be received into the record without the necessity of any witness taking the stand for examination.

WHEREFORE, the Signatories respectfully request that the Commission approve this *Agreement in Lieu of Change Requests*.

Respectfully submitted,

/s/ **Paula N. Johnson**

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**ATTORNEY FOR STAFF OF THE
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COMMISSION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on all parties of record via electronic mail (e-mail) on this 2nd day of September 2021.

/s/ Paula N. Johnson
Paula N. Johnson