

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's 2nd Filing to Implement) **File No. EO-2015-0055**
Regulatory Changes in Furtherance of Energy)
Efficiency as Allowed by MEEIA)

INITIAL POST-HEARING BRIEF OF RENEW MISSOURI

Andrew J. Linhares, #63973
910 E. Broadway, Ste. 205
Columbia, MO 65203
andrew@renewmo.org
(314) 471-9973 (T)
(314) 558-8450 (F)

ATTORNEY FOR EARTH ISLAND
INSTITUTE d/b/a RENEW MISSOURI

August 13, 2015

COMES NOW Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”), by and through its undersigned counsel, and for its initial post-hearing brief in the above-captioned case states as follows:

INTRODUCTION

Ameren Missouri filed its Application for approval of its 2016-2018 MEEIA Plan on December 22, 2014. Rebuttal testimony followed, with several parties raising concerns about the Company’s proposed demand-side investment mechanism (DSIM), the Company’s relatively low savings target, lack of incentives for low-income and multifamily customers, and other issues. Following surrebuttal testimony, parties conducted settlement talks at length but were unable to reach resolution on several issues; however, the parties did develop two competing Non-Unanimous Stipulations and Agreement. After another round of supplemental rebuttal and surrebuttal testimony, the Commission conducted an on-the-record hearing from July 20 – 22, 2015.

This case represents the Commission’s first opportunity to provide meaningful guidance on how the Missouri Energy Efficiency Investment Act (“MEEIA”) should be implemented. This decision is much larger than Ameren Missouri’s efficiency programs for the next three years; the Order will signal the direction the State of Missouri will take in energy efficiency over the coming decades. Given what we are facing – including ever-increasing rates and federal carbon reduction standards – energy efficiency will be an essential resource on which Missouri utilities will need to rely. Because this case is larger than just Ameren Missouri, and because the Commission has the ultimate authority to decide what is permissible under the law, the Commission should not bow to threats that the Company will refuse to pursue energy efficiency if they don’t get their way.

Renew Missouri is asking that the Commission put in place reasonable ground rules that allow utilities to earn a fair rate of return for capturing an ambitious level of energy efficiency that has been

reliably measured and verified in a transparent way. We leave it up to the Commission to decide what modifications to Ameren’s Application are reasonable, based on all the evidence presented. This brief: 1) summarizes the Commission’s legal authority to modify a utility’s MEEIA Plan, while giving our perspective on the concern that the Company may refuse to pursue efficiency entirely; and 2) suggests specific modifications the Commission should make to Ameren Missouri’s MEEIA Plan that are supported by the law and the evidence on the record, and which are most likely to further energy efficiency in our state.

DISCUSSION

I. THE COMMISSION SHOULD USE ITS BROAD AUTHORITY TO APPROVE AMEREN MISSOURI’S MEEIA APPLICATION WITH MODIFICATIONS

The Public Service Commission has been given broad authority – both by statute and through its own rules – to interpret and implement the MEEIA statute. Such authority includes the ability to modify a utility’s MEEIA plan in order to effectuate the goals of the statute. This is an essential legal construct to remember when deciding whether to approve, modify, or deny Ameren Missouri’s 2016-2018 MEEIA Application. In this case and elsewhere, much has been made of the concept that the MEEIA law is “permissive,” i.e. that the utility ultimately gets to decide what is an acceptable demand-side management portfolio. However, the language of the MEEIA statute belies this notion. While the utility must certainly agree to pursue what the Commission approves, it is the Commission that gets the final decision. To suggest otherwise is to attempt to limit the Commission’s authority.

The MEEIA statute grants the Commission the authority to approve a utility’s MEEIA application.¹ It is worth noting that this approval authority comes with the requirement that the proposed programs have a goal of achieving “all cost-effective demand-side savings.” (Please refer to section II.A. below for further explanation.) The MEEIA statute further grants the Commission the

¹ See § 393.1075.4, RSMo.

ability to prescribe rules, provide oversight, approve settlements and tariffs, and regulate EM&V in order to effectuate the statute's goals.² Using this authority, the Commission has issued its rules at 4 CSR 240-20.093 and 094, as well as 4 CSR 240-3.163 and 164.

Concerning the process of approval of a MEEIA application, the rules provide the Commission with three options: “[t]he Commission shall **approve, approve with modification acceptable to the electric utility, or reject** such applications for approval of demand-side program plans...” 4 CSR 240-20.094(3) (emphasis added). In this case, all parties have recommended the second option: approve with modification acceptable to the electric utility. This is evident in the filing of the two separate stipulations and agreement in this case, both of which propose a demand-side management portfolio different from Ameren Missouri's original application.³ In Section II below, we will describe the modifications we are asking the Commission to make to Ameren Missouri's Application.

The following question then arises: how can the Commission approve any of the modifications in the Non-Utility Stipulation when the Company has already indicated it does not approve?⁴ Chairman Kenney asked this specific question at the July 20 hearing.⁵

Renew Missouri asks that the Commission give special consideration to the order in which it decides this case. We believe that the Commission should first decide how to modify Ameren

² § 393.1075.11, RSMo. (“The commission shall provide oversight and may adopt rules and procedures and approve corporation-specific settlements and tariff provisions, independent evaluation of demand-side programs, as necessary, to ensure that electric corporations can achieve the goals of this section.”)

³ See “Non-Unanimous Stipulation and Agreement,” filed by Ameren Missouri, KCP&L, Division of Energy, NRDC, and United for Missouri on June 30, 2015 (“the Utility Stipulation”) and “Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2,” filed by the Office of Public Counsel, the Staff for the Commission, Renew Missouri, Sierra Club, MIEC and MECG on July 8, 2015 (“the Non-Utility Stipulation”) both submitted in File No. EO-2015-0055.

⁴ See “Ameren Missouri's Objection to Non-Unanimous Stipulation and Agreement filed on July 7, 2015,” submitted on July 10, 2015, pp. 3, ¶ 4-5.

⁵ Transcript – Volume 1 (Evidentiary Hearing 7-20-15), pg. 120, lines 15-17.

Missouri's Application so that it comports with the statute and best achieves the goals of MEEIA. Only after it has made those determinations should the Commission concern itself with what is acceptable to the Company. There are good reasons to take this approach.

Parties make many representations in the course of negotiations or trial preparations, which may not necessarily reflect their final positions. Already in this case, we have seen Ameren Missouri agree to include additional cost-effective programs and raise its savings target during negotiations. The Commission shouldn't treat Ameren Missouri's blanket rejection of the Non-Utility Stipulation as a final indication that each and every modification is not "acceptable" to the utility. The two stipulations present a menu of options for the Commission to consider. The suggested modifications below should not be taken as an indivisible package, but rather as reasonable suggestions that each stand on their own merits. When presented with an approved and modified Cycle II MEEIA plan, Ameren Missouri may very well decide that the plan is acceptable (see below for further explanation).

In fact, there are many reasons to expect that Ameren Missouri would not refuse to pursue a modified MEEIA plan, despite threats and statements to the contrary. The modifications suggested below still allow Ameren Missouri to earn millions of dollars in net profit, simply for pursuing the least costly and least risky resource available. For Ameren Missouri to leave such profit on the table would seem to run counter to its shareholder's interests. Dr. Geoff Marke, witness for OPC, stated the following during cross examination with respect to whether Ameren Missouri would walk away if its Stipulation were not approved exactly: "I don't think they'll walk away. I think there's too much money here, given all the constraints and all the issues that are present here."⁶

Next, choosing not to proceed with an approved MEEIA plan could sacrifice customer satisfaction. Ms. Tatro, counsel for Ameren Missouri addressed how the Company's Cycle 1 MEEIA plan has increased customer satisfaction in her opening statement: "[a]nd our customers like it. As Mr.

⁶ Transcript – Volume 2 (Evidentiary Hearing 7-21-15), pg. 611, lines 8-11.

Laurent can tell you, our customer satisfaction scores are higher when our customers are aware of our energy efficiency programs, and even higher if they participate in them.”⁷ Failing to proceed with an approved MEEIA program could also complicate advertising efforts, which Ameren Missouri has taken great care to develop through its “Act On Energy” campaign and branding.

Furthermore, refusing to proceed with a MEEIA program could harm Ameren Missouri’s compliance with the Federal Environmental Protection Agency’s Clean Power Plan. Finalized in August of 2015, the Clean Power Plan includes the ability for emitters to claim credit for capturing energy efficiency prior to 2022, when reduction must begin occurring. The “Clean Energy Incentive Program,” announced in connection with the Clean Power Plan, is a voluntary “matching fund intended to encourage early investments in efficiency for low income communities.”⁸ Participation in would allow Ameren Missouri to receive additional allowances or Emissions Rate Credits (ERCs) from EPA for energy efficiency projects in 2018 and onward.⁹

In her Surrebuttal Testimony for the Company, Lynne M. Barnes warns: “the Company [may] be left with no reasonable choice but to set aside its current plan to spend \$135 million on energy efficiency over the next three years.”¹⁰ These types of statements sound like threats that “Ameren will take its ball and go home,” as OPC’s counsel Tim Opitz characterized them in his opening statement.¹¹ And indeed, Ms. Barnes admits in her testimony that “I cannot predict what course of action the Company will take should the Commission not approve our plan as filed.”¹² If Ameren’s own expert cannot predict whether a modified plan will be acceptable to the Company, the

⁷ Transcript – Volume 1 (Evidentiary Hearing 7-20-15), pg. 13-14, lines 22-1.

⁸ EPA Fact Sheet, “The Clean Power Plan: Clean Energy Incentive Program.” <http://epa.gov/airquality/cpp/fs-cpp-ceip.pdf>

⁹ Id.

¹⁰ Exhibit No. 101 “Surrebuttal Testimony of Lynn M. Barnes,” pg. 28.

¹¹ Transcript – Volume 1 (Evidentiary Hearing 7-20-15), pg. 86, lines 15-16.

¹² Exhibit No. 101 “Surrebuttal Testimony of Lynn M. Barnes,” pg. 28.

Commission should surely wait until it has made its own conclusions on the merits rather than conceding that the proposed modifications are unacceptable to the Company.

The Commission should not allow Ameren Missouri's brinksmanship in this case to prevent the Commission from making determinations about how to reasonably proceed with implementing MEEIA and advancing energy efficiency for the state's future. This case is an opportunity for the Commission to draw a sharp line and articulate a set of principled, fair ground rules for how MEEIA should be implemented. There is no reason to let Ameren Missouri force the Commission to choose between no MEEIA plan and a plan that fails to protect customers or achieve meaningful savings.

Renew Missouri requests that the Commission proceed as follows: 1) issue an Order approving and modifying Ameren Missouri's application; then 2) provide Ameren Missouri with a date certain to indicate that the modified plan is unacceptable to the Company. This allows the Commission to articulate its ground rules regarding its implementation of MEEIA. If the modified plan so unacceptable to the Company that it truly prefers to forego profits for its shareholders, it will have the option of refusing to implement the programs. Or the Company may still propose a plan that the parties may be willing to accept, provided that it meets the Commission's clearly expressed expectations.

II. RECOMMENDED MODIFICATIONS TO AMEREN MISSOURI'S 2016-2018 MEEIA APPLICATION

The below modifications are what Renew Missouri believes to be reasonable ways to ensure Ameren Missouri's MEEIA Plan gets closer to achieving all cost-effective savings, protects consumers more fairly, and better aligns utility incentives. While Renew Missouri is a signatory to the Non-Utility Stipulation for various policy and strategic reasons, we do not consider all of its provisions to be equally important. Moreover, Renew Missouri does not consider the Non-Utility Stipulation to be a non-severable document, but rather a list of logical ways to improve Ameren's Plan

that the Commission should consider separately. When Ameren Missouri objected to it, the Non-Utility Stipulation became simply a position statement of the parties.¹³ Therefore, Renew Missouri considers the Non-Utility Stipulation as merely a statement of position, and reserves the right to advocate for changes or deviations from the Stipulation.

In this section, we will note what we consider to be the most crucial modifications for the Commission to adopt. In particular, we will observe when certain modifications share agreement amongst virtually all of the parties, and thus should be adopted without controversy or deliberation. Finally, we will attempt to summarize the evidence on the record that supports each modification.

A. Pathway for Identifying Deeper Savings

The single most important modification the Commission can make to Ameren Missouri's MEEIA Application is a workable pathway forward for identifying additional cost-effective savings and approving a more significant savings target. Approving a MEEIA plan without a way of identifying and going after significantly more savings would fail to meet one of the central goals of MEEIA: achieving all cost-effective demand-side savings. Renew Missouri believes the best way to ensure the Plan achieves all cost-effective savings in this case is to adopt the proposed "Expert Panel" language found in the Non-Utility Stipulation as a modification to Ameren Missouri's Application.¹⁴ As a secondary modification, the Commission should adopt the unopposed concept wherein the parties would work collaboratively to identify additional cost-effective energy-saving strategies for 2017 and 2018, found in both stipulations.¹⁵

As noted in Section I above, the MEEIA statute grants the Commission authority to approve demand-side programs, but only when the proposed programs have a goal of achieving all cost-

¹³ 4 CSR 240-2.115(2)(D)

¹⁴ The Non-Utility Stipulation at pg. 4, ¶2.d.

¹⁵ See "Non-Unanimous Stipulation and Agreement," ("the Utility Stipulation") at pg. 9, ¶15; *see also* "Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2," ("the Non-Utility Stipulation") at pg. 4-5, ¶3.

effective demand-side savings: “[t]he Commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section **with a goal of achieving all cost-effective demand-side savings.**”¹⁶ The Commission’s rules then provide guidance on what should be considered “all cost-effective:”¹⁷

The commission shall use the greater of the annual realistic achievable energy savings and demand savings as determined through the utility’s market potential study or the following incremental annual demand-side savings goals as a guideline to review progress toward an expectation that the electric utility’s demand-side programs can achieve a goal of all cost-effective demand-side savings: ...

The rules then set out incremental demand-side savings goals from 2012 through 2020, including both annual and cumulative goals for annual energy savings as well as annual peak demand reduction.¹⁸

The Commission’s rules clearly envision a MEEIA process in which utilities incrementally increase their annual amount of energy savings while regularly decreasing their peak demand as well.

According to the only guidance that exists for what should be considered all cost-effective, Ameren Missouri’s MEEIA Application utterly fails to set a goal of achieving all cost-effective savings. The Company’s Application, even as modified by the Utility Stipulation, sets much lower energy and demand goals than the savings goals set out in the rule (only about 0.4 – 0.5 % annual energy savings). On its face, Ameren Missouri’s Application appears not to have the goal of achieving all cost-effective savings. What’s more, Ameren’s modified Application sets significantly lower savings goals than its Cycle 1 Plan, and this is despite Cycle 1 resulting in far greater energy savings than planned. The rebuttal testimony of OPC’s expert witness Dr. Geoff Marke does a good job of comparing both the budgets and savings goals of Ameren Missouri’s Cycle 1 and Cycle 2 plans.¹⁹

¹⁶ § 393.1075.4, RSMo. (emphasis added)

¹⁷ 4 CSR 240-20.094(2).

¹⁸ See 4 CSR 240-20.094(2)(A) and (B) (the goals for annual energy savings are as follows: 2012 = 0.3%; 2013 = 0.5%; 2014 = 0.7%; 2015 = 0.9%; 2016 = 1.1%; 2017 = 1.3%; 2018 = 1.5%; 2019 = 1.7%; 2020 = 1.9%) (the rule also sets a goal of 1.0% annual peak demand reduction).

¹⁹ Exhibit No. 800 “Rebuttal Testimony of Geoff Marke.”

As can be seen in both pre-filed testimony and testimony at hearing, there is ample reason to conclude that far more cost-effective energy and demand savings exists. NRDC's expert witness Phil Mosenthal,²⁰ Sierra Club's expert witness Timothy Woolf,²¹ and OPC's expert witness Dr. Geoff Marke²² all submitted testimony criticizing a controversial participation rate or "take rate" adjustment to Ameren Missouri's 2013 Market Potential Study. These criticisms center around the use of YouGov market research data, which Ameren Missouri applied to its own primary customer survey data to conclude that customers were far less likely to participate in programs. According to NRDC, Sierra Club, and OPC's experts, the result of applying the YouGov market research data was to drastically decrease potential energy savings.

OPC's Dr. Geoff Marke's testifies that the YouGov-driven adjustment is not appropriate because it is: "a new approach that has not been vetted or appropriately utilized in any context outside of Ameren Missouri and Ameren Illinois' 2013 market potential studies."²³ Sierra Club expert Tim Woolf testifies that the adjustments focus too much on a strict payback period and fail to take into account many factors that may influence take rates, including extreme buy-down programs, customer behavior programs, interactive effects between measures.²⁴

In addition, Ameren Missouri may have an inherent incentive to underestimate savings potential in order to eliminate the risk of not reaching its target and maximize its profits under the performance incentive. (Please refer to Section II.C below for further explanation.) This apparent disincentive to accurately estimate potential should be considered by the Commission when deciding whether Ameren Missouri's Application sets a goal of achieving all cost-effective savings.

²⁰ Exhibit No. 301, "Rebuttal Testimony of Phillip Mosenthal."

²¹ Exhibit No. 1200, "Rebuttal Testimony of Tim Woolf." Exhibit No. 1201, "Surrebuttal Testimony of Tim Woolf."

²² Exhibit No. 800, "Rebuttal Testimony of Geoff Marke." Exhibit No.

²³ Exhibit No. 800, pg. 16.

²⁴ Transcript – Volume 2 (Evidentiary Hearing 7-21-15), pg. 406.

The Expert Panel concept, proposed in the Non-Utility Stipulation, offers a method for both identifying additional cost-effective savings and resolving disputes regarding the level of achievable potential. The core of the concept is to locate and select a neutral, 3rd-party mediator whose task will be to solicit opinions from experts in the field of utility market potential studies. After conducting an open and transparent review of the experts' conclusions on the conduct of Ameren Missouri's potential study, the mediator would recommend new energy savings targets for 2017 and 2018. The Commission would then have the opportunity to approve those targets, and approve an additional kWh-based performance incentive to incent the utility to achieve the new targets. Secondary issues – such as who produces the RFP and selects the mediator, the date by which the mediator issues its report, etc. – are of less consequence and could be tweaked according to the Commission's preference.

OPC witness Dr. Geoff Marke explains how such 3rd-party mediators have been used in other jurisdictions to resolve disputes over highly contentious issues where conflicts of interest may exist:²⁵

As in other settings, third-party mediators are often deployed to help resolve disputes over highly contentious issues. In the energy efficiency community third-party mediators have often utilized an approach which relies on a panel of experts to arrive at a consensus estimate or group judgment on what is often perceived as contentious issues. It is often an interactive process, in which experts are presented with an issue, supporting data (both quantitative and qualitative), and a questionnaire with both open and closed-ended questions that get at the assumptions behind the appropriate answer. This process is based on the principle that structured responses from experts will be more accurate than unstructured responses from individuals in which a conflict of interest may exist.

A majority of parties in this case take issue with the Company's relatively low savings target, including Renew Missouri, the Sierra Club, the Staff, OPC, and even signatories to the Utility Stipulation including the NRDC and the Division of Energy. For this reason, both stipulations agree to work collaboratively between the parties to identify strategies for achieving additional cost-effective energy savings. This collaborative process (which is unopposed) does offer some value, and the

²⁵ Exhibit No. 802, "Supplemental Direct Testimony of Geoff Marke." pg. 8-9, lines 19-2.

Commission should certainly adopt it as a modification. However, only the Expert Panel concept proposes a feasible method for: 1) identifying additional savings; 2) mediating and resolving a highly contentious issue regarding customer participation rates; 3) providing a process for approving a new savings target for 2017-2018; and 4) incenting the Company to achieve those new targets. Renew Missouri urges the Commission to modify Ameren Missouri's Application to include the "Expert Panel" provision found in the Non-Utility Stipulation.

B. A Fair, Verified Lost Revenue (DSIM) Mechanism

One of the primary issues in this case, and a highly contentious issue at hearing, is the issue of Ameren Missouri's Demand-Side Investment Mechanism (DSIM). The parties agree in principle that a Throughput Disincentive (or lost revenue) mechanism should make the utility indifferent as to any reduction in sales due to measures installed under MEEIA programs. The main disagreement between the two stipulations is the issue of whether Evaluation, Measurement and Verification (EM&V) should be performed to substantiate the actual amount of revenue lost due to MEEIA programs. While Renew Missouri considers this issue to be of secondary importance, we do urge the Commission to modify Ameren Missouri's Application to include the DSIM mechanism proposed in the Non-Utility Stipulation.²⁶

The MEEIA law states: "[i]t shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs."²⁷ In order support that policy, the statute then directs the Commission to "ensure that utility financial incentives are aligned with helping customers use energy more efficiently..."

All parties to this case recognize that utilities should be allowed to recover the lost sales

²⁶ "Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2," ("the Non-Utility Stipulation") at pg. 4-5, ¶3.

²⁷ § 393.1075.3, RSMo.

margins they experience due to energy efficiency measures installed under MEEIA. Moreover, all parties have agreed – both in previous MEEIA cases and in this one – to use a demand-side investment mechanism (DSIM) that addresses the utility’s lost revenues or “throughput disincentive” by granting the utility a portion of the Net Shared Benefits (NSBs) that result from efficiency programs. Renew Missouri believes strongly that in order to properly incent utilities to capture energy efficiency, we must make utilities whole for the power they do not sell.

The primary difference between the stipulations concerning the DSIM is whether the Company should be required to determine the actual level of revenues lost due to efficiency programs. Ameren Missouri contends that EM&V is not necessary, and that a deemed savings estimate is sufficient for recovery of the throughput disincentive.²⁸ Ameren Missouri’s proposal is similar to the Company’s DSIM mechanism currently approved for Cycle 1, in which EM&V results are used only to calculate the performance incentive, not to true up the portion of NSBs recovered to address the throughput disincentive.²⁹ By contrast, the Non-Utility Stipulation would include a true-up mechanism using EM&V to ensure that the Company recovers the verified amount of lost revenue it experiences, no more and no less. This two-tiered mechanism would allow Ameren Missouri contemporaneous recovery of one-third (66.67%) of its deemed lost revenues each month, and then each calendar year allow recovery of the remaining lost revenues based on the actual realized kWh savings determined through EM&V.³⁰

There is substantial justification behind The Non-Utility Stipulation’s proposed DSIM framework. In his Rebuttal Testimony, Staff witness John Rogers demonstrates how failing to confirm lost revenues through EM&V allows a utility to realize additional earnings above and beyond the

²⁸ The Utility Stipulation at pg. 10-13.

²⁹ See “Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing.” Case No. EO-2012-0142, submitted on July 5, 2012.

³⁰ The Non-Utility Stipulation at pg. 7-8, ¶6.

throughput disincentive: “Staff concludes that – all else equal – for 2013, Ameren Missouri received, through its TD-NSB Share, \$4,573,635 more than its actual (as measured and verified through full EM&V) lost margin revenue.”³¹ Sierra Club witness Tim Woolf testified during cross-examination: “all of the lost-revenue mechanisms that I am familiar with require EM&V to be performed to demonstrate the actual amount of lost revenue saved, so that the Company is compensated for what it actually lost and not a hypothetical estimate.”³²

Ameren witness Bill Davis takes issue with the Non-Utility Stipulation DSIM mechanism because, in his view, the Company would experience losses due to the delay in recovering roughly one-third of its lost revenues until after EM&V each year.³³ However, Mr. Davis concedes that these losses could be mitigated if the utility were afforded the appropriate carrying costs.³⁴ Furthermore, Mr. Davis admits that the Non-Utility Stipulation improves upon Staff’s original position by not taking away revenues due to load growth or weather.³⁵ The Non-Utility Stipulation DSIM is already a compromise, but it seems a further compromise is possible. Renew Missouri requests that the Commission adopt the Non-Utility Stipulation DSIM component, but also allow Ameren Missouri to recover an additional portion of NSBs to address the appropriate carrying costs.

Again, Renew Missouri would like to remind the Commission of its broad authority to determine what is appropriate under MEEIA. This authority extends to the details of a DSIM. The Commission’s rules state: “[b]oth the utility and the commission retain the authority to approve, accept, or reject any proposed establishment, continuation, or modification of a DSIM or any

³¹ Exhibit No. 708, “Rebuttal Testimony of John A. Rogers.” pg. 30-31.

³² Transcript – Volume 2 (Evidentiary Hearing 7-21-15), pg. 400, lines 11-16.

³³ Exhibit No. 107, “Rebuttal Testimony to Non-Utility Stipulation of William R. Davis.” pg. 4-10.

³⁴ Id. at pg. 8, lines 20-21.

³⁵ Id. at pg. 3, lines 11-17.

proposed alternative DSIM.”³⁶ Furthermore, the Commission is explicitly invited to consider EM&V in the context of a DSIM.³⁷ (emphasis added)

(E) In determining to approve, modify, or continue a DSIM, the commission may consider, but is not limited to only considering, the expected magnitude of the impact of the utility’s approved demand-side programs on the utility’s costs, revenues, and earnings, the ability of the utility to manage all aspects of the approved demand-side programs, **the ability to measure and verify the approved program’s impacts**, any interactions among the various components of the DSIM that the utility may propose, and the incentives provided to the utility as a result of the inclusion or exclusion of cost recovery component, **utility lost revenue component**, and/or utility incentive component in the DSIM.

While Ameren Missouri could refuse to implement the Commission’s compromise, Renew Missouri urges the Commission to come to its own conclusion on what is appropriate first, and then let the Company react. Our strong expectation is that, when presented with an approved DSIM and a performance incentive that allows them to earn millions in profit, Ameren Missouri will enthusiastically embrace the Plan. For the Company to refuse to implement an approved Plan simply because it requires them to confirm their actual lost revenues through EM&V would be a spiteful, ideologically driven decision and would sacrifice profit for the Company’s shareholders.

On a final note concerning the DSIM and the lost revenue component, Renew Missouri reiterates that it strongly prefers revenue decoupling as a superior method of making the utility truly indifferent as to its reduced sales. Moreover, a broad majority of parties have either expressed support or openness to the idea of revenue decoupling in this case, including Staff,³⁸ the Division of Energy,³⁹ Ameren Missouri,⁴⁰ Renew Missouri,⁴¹ NRDC,⁴² and Sierra Club.⁴³ Renew Missouri hopes the

³⁶ 4 CSR 240-20.093(2)(B)

³⁷ 4 CSR 240-20.093(2)(E)

³⁸ Transcript – Volume 1 (Evidentiary Hearing 7-20-15). pg. 78, lines 19-24

³⁹ Transcript – Volume 1 (Evidentiary Hearing 7-20-15). pg 46, lines 23-47.

⁴⁰ Exhibit No. 100, “Energy Efficiency Plan.” pg. 93; *see also* Transcript – Volume 1 (Evidentiary Hearing 7-20-15). pg. 39, lines 10-16.

⁴¹ Transcript – Volume 1 (Evidentiary Hearing 7-20-15). Pg 123-124, lines 25-10.

⁴² *See generally* Exhibit No. 300, “Rebuttal Testimony of Ashok Gupta.”

Commission will consider moving forward with some version of revenue decoupling as a way of avoiding continued conflicts and disagreements regarding lost revenues, EM&V, and the throughput disincentives.

Renew Missouri requests that the Commission modify Ameren Missouri's Application to include the DSIM provisions in the Non-Utility Stipulation, but also authorize Ameren Missouri to recover an additional portion of NSBs to address the appropriate carrying costs.

C. A Performance Incentive that Encourages Real, Long-Lasting Savings

Another contentious issue in this case has been the proper way to structure Ameren Missouri's performance incentive. While Renew Missouri believes this issue to be less important than identifying deeper savings, we invite the Commission to consider the performance incentive mechanism proposed in the Non-Utility Stipulation.⁴⁴

In support of the stated policy to value demand-side investments equal to traditional investments in supply and infrastructure, the MEEIA statute directs the Commission to "provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings."⁴⁵ No party disagrees that a utility's ability to earn a profit is a necessary part of valuing efficiency like a traditional resource and incenting the utility to capture savings.

Ameren Missouri's proposed performance incentive would allow the Company to earn a maximum of \$48 million if it achieves 130% of its three-year energy savings target.⁴⁶ This is a \$15 million increase over the maximum incentive authorized for the Company's Cycle 1 Plan.⁴⁷ The Utility Stipulation would also grant Ameren Missouri a nearly \$20 million profit for only achieving

⁴³ Transcript – Volume 1 (Evidentiary Hearing 7-20-15). pg. 475, lines 3-9.

⁴⁴ The Non-Utility Stipulation at pg. 8-9, ¶7.

⁴⁵ § 393.1075.3(3), RSMo.

⁴⁶ The Utility Stipulation, Appendix A.

⁴⁷ See Appendix B to the "Unanimous Stipulation and Agreement Resolving Ameren Missouri's MEEIA Filing." Case No. EO-2012-0142, submitted on July 5, 2012.

70% of its savings goal,⁴⁸ which is likely understates as discussed in Section II.A. Like the performance incentive mechanism approved in Ameren Missouri's Cycle 1 Plan, the Utility Stipulation's performance incentive is solely tied to kWh savings.⁴⁹

We now have nearly three years of experience with MEEIA programs to know more about exactly what the Company is being incentivized to do, and whether it is a fair investment of ratepayer money. John Rogers' Supplemental Rebuttal testimony explains Staff's analysis that very little customer benefits will result from the high "deemed" savings allowed by the DSIM and performance incentive mechanisms in the Utility Stipulation.⁵⁰

Furthermore, as explained in Section II.A above, there is a strong likelihood that Ameren Missouri's savings target drastically underestimates the level of achievable savings. This means that Ameren is almost certain to achieve the maximum 130% savings level and have no further incentive to achieve additional savings. NRDC witness Phil Mosenthal concludes: "Ameren's proposal to use self-adjusting savings targets for the purpose of determining the performance incentive undermines the whole purpose of the performance incentive in that it eliminates the risk that Ameren may not reach the target and get the full incentive."⁵¹

The performance incentive in the Non-Utility Stipulation offers a more creative way of incenting the utility to pursue deeper and more significant savings that benefit all ratepayers, participants and non-participants alike. The Non-Utility Stipulation's performance incentive has several components. The primary component is the demand-related incentive, which would give the Company a chance to earn up to \$81.5 million if it is able to reduce its demand (KW) by a significant-

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Exhibit No. 712, "Rebuttal to Supplemental Testimony of John A Rogers." pg. 6-8.

⁵¹ Exhibit No. 301, pg. 5, lines 3-6.

enough degree.⁵² Renew Missouri feels it is worthwhile to incent demand savings because it increases the likelihood of closing old power plants and/or avoiding the construction of future plants.

Furthermore, demand savings benefit all customers, not just participants in efficiency programs.

The Non-Utility Stipulation also provides for a customer participation incentive.⁵³ Renew Missouri believes that increasing customer participation is a key way of both achieving much more significant savings and decreasing the cost per unit of savings to the utility.

Finally, the Non-Utility Stipulation also allows for an energy, or KWh-based, performance incentive in connection with the Expert Panel concept discussed in Section II.A above. Energy savings are of prime importance to Renew Missouri, as that is what translates directly into carbon reduction, pollution reduction, and a cleaner environment.

For the above reasons, Renew Missouri urges the Commission to modify Ameren Missouri's Application to include the performance incentive proposed in the Non-Utility Stipulation.

D. The Multifamily Low-Income Program

Unlike most of the issues addressed in this brief, the parties to this case largely agree on the issue of the proposed Multi-family Low-Income program. Both the Utility Stipulation and the Non-Utility Stipulation propose programs that are alike in most respects. These consensus items were developed through productive negotiations and collaboration between many parties. In particular, Ameren Missouri worked closely with the National Housing Trust and Tower Grove Neighborhoods Community Development Corporation ("the housing groups) to develop an approach aimed at making utility efficiency program more available to customers in multifamily affordable housing, who have traditionally been neglected by utility efficiency programs. Those shared program details are briefly detailed below.

⁵² The Non-Utility Stipulation at pg. 8-9, ¶7.

⁵³ Id. at 9, ¶7.b

Both Stipulations agree that the Multifamily Low-Income program should have an overall budget of approximately \$10.75 million, and a program savings target of 13,666 MWh.⁵⁴ In addition, both Stipulations agree that the Multifamily Low-Income program should provide multifamily building owners and residents with a single point of contact, or “Coordinator” who would, among other duties: determine eligibility; help navigable the range of measures and incentives; assist in the rebate application process; and maintain relationships with trade allies as well as assistance agencies.⁵⁵ Finally, both Stipulations agree that the program will provide a 25% bonus incentive for multifamily low-income whole building and common area measures.⁵⁶ Renew Missouri strongly urges the Commission to adopt these consensus items as modifications to Ameren Missouri’s Low Income program in its original Application.

However, the Stipulations do differ in two key respects concerning the Multifamily Low-Income program. The Non-Utility Stipulation clarifies two key details relating to customer eligibility and information provided in energy audits that the Commission should consider adopting as well. While the Utility Stipulation only offers eligibility of the program to the Company’s 2(M) Small General Service Rate Classification and larger, the Non-Utility Stipulation extends the program’s eligibility to the 1(M) Service Classification as well.⁵⁷ Furthermore, the Non-Utility Stipulation requires that energy audits include information on estimated costs, while the Utility Stipulation does not require estimated cost information to be provided following energy audits.⁵⁸ Renew Missouri believes both of these additions will lead to a more effective program in which more low-income and affordable rental housing customers will be likely to participate. We urge you to adopt these program details in addition to the consensus program details as modifications to Ameren Missouri’s Low

⁵⁴ See The Non-Utility Stipulation, pg. 5-6, ¶4.a; see also The Utility Stipulation, pg. 4, Table 2.

⁵⁵ See The Non-Utility Stipulation, pg. 5-6, ¶4.a; see also The Utility Stipulation, pg. 7, ¶8c.

⁵⁶ See The Non-Utility Stipulation, pg. 6, ¶4.d; see also The Utility Stipulation, pg. 7, ¶8e.

⁵⁷ See The Non-Utility Stipulation, pg. 6, ¶4.e; see also The Utility Stipulation, pg. 7, ¶8e.

⁵⁸ See The Non-Utility Stipulation, pg. 7, ¶4.e; see also The Utility Stipulation, pg. 7, ¶8f.

Income program in its original Application.

CONCLUSION

In this case, the Commission has a unique opportunity to influence the direction that energy efficiency will take over the coming years and decades. As energy efficiency becomes a more vital and non-negotiable resource, it will be essential to put in place practices that are both achieving the goals of MEEIA and bringing Missouri in-step with federal carbon reduction requirements. MEEIA grants the Commission broad authority to interpret the statute and to put in place rules that effectuate the dual purposes of valuing efficiency equal to traditional resource investments and achieving all cost-effective energy efficiency. The Commission should use that authority to weigh the evidence and carve a path forward for efficiency in Missouri by approving the Company's Application with the modifications laid out in this brief. Renew Missouri believe it is both possible and reasonable for the Commission to modify Ameren Missouri's Plan in ways that improve upon the original Application and are ultimately acceptable to Ameren Missouri.

Respectfully Submitted,

/s/ Andrew J. Linhares
Andrew J. Linhares, #63973
910 E. Broadway, Ste. 205
Columbia, MO 65203
andrew@renewmo.org
(314) 471-9973 (T)
(314) 558-8450 (F)

ATTORNEY FOR EARTH ISLAND
INSTITUTE d/b/a RENEW MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and electronically mailed to all counsel of record on this 13th day of August, 2015.

/s/ Andrew J. Linhares _____

Andrew J. Linhares