

**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) **File No. EO-2012-0142**
Changes in Furtherance of Energy)
Efficiency as allowed by MEEIA)

**Missouri Department of Natural Resources' Response to
Staff's Motion for Variance Determination and Motion for Expedited
Treatment**

COMES NOW the Missouri Department of Natural Resources,
Division of Energy (MDNR), by and through undersigned counsel, and files
this response to the Missouri Public Service Commission Staff's (Staff)
Motion for Variance Determinations (Motion). MDNR respectfully states the
following:

I. Introduction

The long-awaited first applications to implement the Missouri Energy
Efficiency Investment Act (MEEIA) have arrived. It is clear that the road to
MEEIA implementation is still a rocky one, as partly evidenced by Kansas
City Power & Light's dismissal of its MEEIA application¹, the lack of
consensus on a procedural schedule in this case, and the lengthy pleadings on
variances that the Commission is being presented with. MDNR encourages
the Commission to focus on the state policy perspectives of MEEIA, the

¹ See *Kansas City Power & Light Company's Notice of Dismissal*, File No. EO-2012-0008, filed February 17, 2012.

reasons that a statute addressing “Energy Efficiency Investment” was needed in Missouri, the difficulty of implementing MEEIA’s policies in the face of the historic utility business paradigm of “build plants-sell kilowatts-collect return on investment”, and the stalling and reversal of progress in energy efficiency investment in Missouri in recent months. Positive MEEIA results in these first-round cases are critical; the Commission can and should provide guidance and motivation to foster timely resolution of issues in this case. The 120-day period set by the Commission in 4 CSR 240-20.094(3) for decisions on DSM program applications clearly signaled the Commission’s intent to process the important matters presented in MEEIA implementation cases on a priority basis.

MDNR is unaware of any requirement that a utility seek and obtain approval of variances in advance of a MEEIA filing. In fact, if the Commission wanted to require pre-filing of variances in advance of applications, it could have done so in the MEEIA rules, in a manner similar to the pre-filing requirement in the Commission’s Integrated Resource Planning rule (4 CSR 240-22.080(13)). It is not appropriate to add this threshold requirement after a utility has filed its application. Furthermore, even a blanket decision that all variances must be addressed as a threshold matter, with time to address variances added to the 120-day period or tolling the 120-day period, would not be appropriate. It is possible, and indeed quite

likely, that the Commission may find that some variances (perhaps even most or all) will clearly warrant consideration “with the case,” while it may also be appropriate for the Commission to advise the Company that additional information should be provided in support of variance requests.

MDNR asks the Commission to resolve these issues as soon as practicable. Efforts to retain a schedule as close to 120 days as possible is essential so that the robust DSM program proposed by Ameren Missouri can be implemented and begin providing savings to customers, balanced with appropriate cost recovery, incentives and earnings opportunities for the company.

II. MDNR’s Response Regarding Variances Related to Prospective Recovery

In its DSIM application, Ameren Missouri asked for variance from the requirements set forth in 4 CSR 240-20.093(2)(H)3 and other rules provisions that prescribe retrospective recovery of net shared benefits. Staff argues that this variance should be rejected because Ameren Missouri has not demonstrated that it will experience financial harm if it pursued a utility incentive mechanism that is consistent with the rules.

On February 22, 2012, Ameren Missouri filed supplemental testimony addressing collection of net shared benefits from its energy efficiency programs prospectively in order to mitigate the impact of the throughput

disincentive to the company. MDNR requests the Commission delay ruling on Ameren Missouri's variance request to allow parties sufficient time to review Ameren's supplemental filing to determine whether it provides adequate information to address this issue. Ameren's MEEIA filing demonstrates customer benefits, as measured by the Total Resource Cost Test (TRC), are approximately twice the cost that customers are asked to bear.² The supplemental testimony provides additional information for an evaluation of the benefits that both the utility and its customers will realize from effective energy efficiency programs.

In reviewing this variance, MDNR requests that the Commission be mindful of the parameters it set for itself in reviewing DSIMs, along with those set by the General Assembly in the MEEIA statute:

The commission shall approve the establishment, continuation, or modification of a DSIM and associated tariff sheets if it finds the electric utility's approved demand-side programs are expected to result in energy and demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers and will assist the commission's efforts to implement state policy contained in section 393.1075, RSMo, to—

1. Provide the electric utility with timely recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs;
2. Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner

² See Ameren Missouri MEEIA Application, Table 1.3, Page 11.

that sustains or enhances utility customers' incentives to use energy more efficiently; and

3. Provide timely earnings opportunities associated with cost-effective measurable and/or verifiable energy and demand savings.³

and

(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 interaction among the various components of the DSIM that the utility may propose, and the incentives or disincentives 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. In this context the word "disincentives" means any barrier to the implementation of a DSIM. There is no penalty authorized in this section.⁴

The statutory goal of achieving all cost-effective demand-side savings (Sec.

393.1075 RSMo.), in combination with the legislative authorization that "[t]o

comply with this section the commission may develop cost recovery

mechanisms to further encourage investments in demand-side programs"

(Sec. 393.1075 RSMo.), and the rule provisions cited above provide guidance

to the Commission not only in its review of a DSIM proposal but also in

evaluating the presence of good cause for variances. That is, the Commission

may find good cause for one or more variances in assertions made by Ameren

³ 4 CSR 240-20.093(2)(C)

⁴ 4 CSR 240-20.093(2)(E)

regarding factors enumerated in the rule as quoted above, for reasons that the variance is consistent with state policy “to further encourage investment in demand-side programs,” without extensive factual or quantitative justification. In other instances, it may be appropriate for the Commission to find that the Company should provide additional support for variances.

III. MDNR’s Response Regarding Deemed Savings

Ameren has developed a technical reference manual (TRM) containing a comprehensive list of energy efficiency measures and deemed savings values, as is contemplated by the MEEIA rules (See, for instance, 4 CSR 240-20.094(8)(B)). The company proposes to use its TRM in estimating the savings generated by installed energy efficiency measures. Because the use of a TRM has implications for utility evaluation and the determination of savings levels, Ameren is asking for variances with respect to the requirements for retrospective recovery. Staff, in its response, objects to the use of a TRM on grounds that it facilitates prospective recovery of lost margins by allowing documentation of achieved savings before the completion of a full evaluation cycle. It is important to recognize that many of the deemed savings in Ameren’s TRM are based on evaluations of Ameren’s implemented DSM programs.

MDNR supports the development of a statewide TRM and advocated for its inclusion in the MEEIA rules because of the proven value of the TRM

in simplifying program planning by building on historical evaluations and establishing accepted measure savings levels at the **beginning** of a program life. There are also potential benefits from streamlining the evaluation process using the TRM. Parties have discussed the use of the TRM and the impact of the TRM on the conduct of evaluations in a technical conference. The use of the TRM is an area that Ameren and parties need to develop experience with. It is an innovative development encouraged in the MEEIA rules that has the potential to streamline both DSM program planning and program evaluation. MDNR maintains that a Commission decision to reject its use on the grounds that it might encourage prospective recovery is premature and counter-productive, as it would cut off the other benefits that use of a TRM will bring.

WHEREFORE, MDNR respectfully submits this Response to Staff's Motion.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Jennifer S. Frazier
Jennifer S. Frazier
Deputy Chief Counsel
Agriculture & Environment Division
Missouri Bar No. 39127
P.O. Box 899
Jefferson City, Missouri 65102
Telephone: (573) 751-8795
Fax: (573) 751-8796
E-mail jenny.frazier@ago.mo.gov

**Attorney for Missouri Department of
Natural Resources**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted electronically to all counsel of record this 24th day of February, 2012.

/s/ Jennifer S. Frazier
Jennifer S. Frazier
Deputy Chief Counsel
Agriculture & Environment Division