

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

In the Matter of Union Electric Company d/b/a            )  
Ameren Missouri for a Variance from the                )       File No. EE-2020-  
Timing Requirements of 4 CSR 240-20.094(7)(K).    )

**NOTICE OF CASE FILING, APPLICATION FOR VARIANCE,  
AND MOTION FOR EXPEDITED CONSIDERATION**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "the Company"), and pursuant to 20 CSR 4240-2.060(4), 20 CSR 4240-2.080(14), 20 CSR 4240-4.017, and 20 CSR 4240-20.094(11), submits this *Notice of Case Filing, Application for Variance, and Motion for Expedited Consideration* ("Application") to facilitate a variance from the timing requirements of 20 CSR 4240-20.094(7)(K), which only allows opt-out customers to opt back in to energy efficiency programs two to four months in advance of the calendar year they want to resume participation. In support of its position, Ameren Missouri states as follows:

**INTRODUCTION**

1.       20 CSR 4240-20.094(7)(K) allows a customer who has opted out of energy efficiency program participation to "revoke an opt-out by providing a written notice to the utility and commission two to four (2-4) months in advance of the calendar year for which it will become eligible for the utility's demand-side programs' costs and benefits." The addition of the demand response programming to Ameren Missouri's suite of MEEIA<sup>1</sup> 2019-21 programs has garnered more attention as it enters its second year. The demand response program has received additional attention from opted-out customers, including one who has specifically requested to revoke its opt-out in order to begin participating in these programs beginning with the 2020 program season.<sup>2</sup>

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<sup>1</sup> Missouri Energy Efficiency Investment Act.

<sup>2</sup> The program season runs from May through September, inclusive. See Electric Service Tariff Sheet No. 247.

Ameren Missouri believes more customers may make similar requests. Because increased participation in demand response programming provides benefits to both participating and nonparticipating customers, Ameren Missouri requests a variance of the timing requirement, and instead allow customers to revoke their opt-outs in sufficient time to begin demand response program participation with the 2020 program season, and continuing through the remainder of the MEEIA 2019-21 program. Ameren Missouri was granted a similar variance from the opt-in timing requirements, applicable to the 2019 program year, in File No. EE-2019-0272.

2. Under 20 CSR 4240-4.017(1)(D), waivers of the 60-day notice may be granted for good cause shown. Good cause includes, among other things, providing a verified statement that no communications have occurred with the office of the commission within the preceding 150 days regarding a substantive issue likely to be in the case. Ameren Missouri meets this requirement. Through this pleading, the Company provides notice that this case involves a variance request from the timing requirements for requests to revoke opt-outs from MEEIA programs.

3. In support of its position and in compliance with 20 CSR 4240-20.094(11), 20 CSR 4240-2.060(1), 20 CSR 4240-2.060(4), 20 CSR 4240-2.80(14), and 20 CSR 4240-4.017(1)(D), Ameren Missouri provides the required information in the following sections of this *Application*:

- I. 20 CSR 4240-2.060(1), (A) through (M)<sup>3</sup>
- II. 20 CSR 4240-2.080(14)
- III. Requested Variance

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<sup>3</sup> Those requesting variances pursuant to 20 CSR 4240-2.060(4) must also provide the information required by 20 CSR 4240-2.060(1).

**I. 20 CSR 4240-2.060(1), (A) through (M)**

**Paragraph (A) – Applicant**

4. The Company is a Missouri corporation doing business under the fictitious name of Ameren Missouri, organized and existing under the laws of the State of Missouri, in good standing in all respects, with its principal office and place of business located at One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103. The Company is engaged in providing electric and gas utility services in portions of Missouri as a public utility under the jurisdiction of the Commission. The Company is a subsidiary of Ameren Corporation.

**Paragraph (B) – Articles of Incorporation; Paragraph (E) – Fictitious Name; Paragraph (G) – Information Previously Submitted; Paragraph (H) – Character of Business<sup>4</sup>**

5. Ameren Missouri previously submitted to the Commission a certified copy of its Articles of Incorporation (See Case No. EA-87-105), as well as its Fictitious Name Registrations as filed with the Missouri Secretary of State's Office (See File Nos. EA-2019-0181. The Company also recently submitted to the Commission a certified copy of its Certificate of Corporate Good Standing in File No. EF-2020-0224. These documents are incorporated by reference and made a part of this *Application* for all purposes.

**Paragraph I – Correspondence and Communication**

6. Correspondence, communications, orders and decisions in regard to this *Application* should be directed to the following, as well as undersigned:

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<sup>4</sup> Paragraphs (C), (D), and (F) do not apply to Ameren Missouri.

Bill Davis  
Director of Energy Solutions  
Ameren Missouri  
1901 Chouteau Avenue  
St. Louis, MO 63166-6149  
[WDavis2@ameren.com](mailto:WDavis2@ameren.com)

Tom Byrne  
Senior Director Regulatory Affairs  
Ameren Missouri  
1901 Chouteau Avenue  
St Louis, MO 63155-6149  
[TByrne@ameren.com](mailto:TByrne@ameren.com)

**Paragraph (K) – Actions, Judgments, and Decisions; Paragraph (L) – Fees<sup>5</sup>**

7. Ameren Missouri has no final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates that have occurred within three years of the date of this *Application*. By the nature of its business, the Company has, from time-to-time, pending actions in state and federal agencies and courts involving customer service or rates. Company has no annual report or assessment fees overdue to this Commission.

**Paragraph (M) – Affidavit**

8. An affidavit in support of this *Application* by an officer of the Company is included as Exhibit A.

**II. 20 CSR 4240-2.080(14)**

9. Ameren Missouri asks that the Commission grant expedited treatment and issue an order granting this variance by June 7, 2020.<sup>6</sup> The business demand response program seasons runs from May through September of each program year. At least one customer wishes to begin participating in the demand response program this summer, but did not reach this decision in sufficient time to revoke its opt-out status during the window (September 1 – October 31 of the previous calendar year) for doing so.<sup>7</sup> Ameren Missouri believes this one customer may not be the only one interested in revoking its opt-out in order to participate during the remainder of this

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<sup>5</sup> Paragraph (J) does not apply to Ameren Missouri.

<sup>6</sup> 20 CSR 4240-2.080(14)(A) requires the applicant to provide "[t]he date by which the party desires the commission to act..."

<sup>7</sup> The window for revocation of opt-out is described in more detail later in this pleading.

summer's program season. Granting this variance will allow customers to revoke opt-outs and perform the enrollment activities necessary to begin participating in Ameren Missouri's MEEIA demand response programs as soon as possible during the remainder of the 2020 program season. The earlier such an opt-in can be granted for customers, the more meaningful their participation during the 2020 program season can be. Expediting the grant of this variance request will not negatively impact any customer. In fact, increased MEEIA participation will provide additional benefits to not only customers who participate in demand response programming, but to all customers because of the overarching benefits of increased MEEIA program participation.<sup>8</sup> This request could not be submitted to the Commission for decision because Ameren Missouri did not know until recently that at least one customer definitively (rather than potentially) wanted to participate in the demand response program during the summer 2020 season.<sup>9</sup>

### **III. Requested Variances**

10. 20 CSR 4240-4.017(1)(D) allows a variance from the 60-day notice requirement for good cause shown. 20 CSR 4240-20.094(11) also allows variance from provisions of the Demand Side Program rule when good cause is shown. The good cause for each of these is discussed in more detail below.

#### **A. 60-Day Notice Requirement**

11. Ameren Missouri requests a variance from the 60-day notice requirement of 20 CSR 4240-4.017(1), which states, in relevant part:

Any person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case....

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<sup>8</sup> 20 CSR 4240-2.080(14)(B) requires an applicant for expedited treatment to state "[t]he harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party..."

<sup>9</sup> 20 CSR 4240-2.080(14)(C) requires an applicant for expedited treatment to explain why "the pleading was filed as soon as it could have been or an explanation of why it was not."

Pursuant to 20 CSR 4240-4.017(1)(D), waivers of the 60-day notice requirement may be granted for good cause shown. The rule further provides that good cause includes "a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case..."<sup>10</sup> As indicated in the Affidavit attached as Exhibit A, Ameren Missouri has had no communications with the office of the Commission (as defined by 20 CSR 4240-4.015(10)) regarding any substantive issue likely to be in this case during the preceding 150 days.<sup>11</sup> Accordingly, Ameren Missouri has established good cause for a waiver from the 60-day requirement of 20 CSR 4240-4.017(1). No other public utility will be affected by granting the Company a waiver from this requirement.

**B. Requested Variance**

12. Ameren Missouri requests a variance from 20 CSR 240-20.094(7)(K) which reads:<sup>12</sup>

Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission two to four (2-4) months in advance of the calendar year for which it will become eligible for the utility's demand-side programs' costs and benefits. Any customer revoking an opt-out to participate in demand-side programs will be required to remain in the demand-side program(s) for the number of years over which the cost of that demand-side program(s) is being recovered, or until the cost of their participation in the demand-side program(s) has been recovered.

13. There is a good reason for a variance from this provision.<sup>13</sup> The customers who

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<sup>10</sup> Pursuant to the Commission's *Order Waiving 60-Day Notice Requirement* issued on August 1, 2017, in File No. WM-2018-0023, the examples of good cause provided in the rule are not exclusive, and the Commission may find that good cause has been established by other circumstances.

<sup>11</sup> While Ameren Missouri's MEEIA 2019-21 program did come before the Commission (primarily in the form of an on-the-record presentation to inform the Commission's decision to approve the uncontested settlement reached by the parties to the proceeding), the specific matter of waiving revocation of opt-out requirements was neither raised nor discussed during the 150 days preceding this filing.

<sup>12</sup> See 20 CSR 4240-2.060(4)(1), which requires applications for waivers of variances to provide a "[s]pecific indication of the statute, rule, or tariff from which the variance is sought."

<sup>13</sup> 20 CSR 4240-2.060 provides that an application for a waiver or variance must include "[t]he reasons for the proposed variance or waiver..."

want to once again participate in MEEIA programs must indicate as such via written notice between September 1 and October 31 before the year in which they want to resume participation.

<sup>14</sup> As previously noted, Ameren Missouri was provided a similar variance for program year 2019 in File No. EE-2019-0272. The Company now finds that a similar variance is necessary for program year 2020, and will likely be necessary for every program year through the life of its MEEIA 2019-21 cycle. Entering the second year of its MEEIA 2019-21 program, the awareness and interest in this program continues to grow, but as of yet, is still garnering the most attention as it is about to begin the summer cycle rather than during the window for revoking opt-out, which occurs in the preceding calendar year. In other words, many customers are expressing interest in the business demand response program just as it is about to begin rather than months earlier during the opt-in window. As the program increases in popularity, the Company expects more opt-out customers to express interest. Once the MEEIA-2019-21 program is supplanted by a fourth cycle MEEIA, the Company expects customers will be sufficiently aware of the summer demand response program availability that further waivers will be unnecessary. In the meantime, rather than request an additional waiver annually through the life of the MEEIA-2019-21 program, Ameren Missouri requests that this waiver continue until the current program expires.

14. There is sufficient justification for the provision of this waiver.<sup>15</sup> Given that increased energy efficiency participation provides various benefits to not just the participating customers but also nonparticipating customers, the Company believes it is appropriate to allow customers to revoke their opt-outs out of sequence. Allowing customers to opt-in outside of the provided revocation period will not only have access to the demand response program, but also

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<sup>14</sup> 20 CSR 4240-20.094(7)(K) allows customers to revoke opt-out status "two to four (2-4) months in advance of the calendar year for which it will become eligible for the utility's demand-side programs' costs and benefits..."

<sup>15</sup> 20 CSR 4240-2.060(4)(B) provides that an application for a waiver or variance must provide "a complete justification setting out the good cause for granting the variance or waiver..."

the applicable portfolio of energy efficiency programs Ameren Missouri offers. In exchange, however, the Company notes that customers who subsequently renew their desire to opt-out should once again be held to the requirements of 20 CSR 4240-20.094(7)(L).

15. Granting this variance will not impact any other public utility.<sup>16</sup>

16. In light of the foregoing, Ameren Missouri specifically requests a variance from 20 CSR 4240-20.094(7)(K), and instead asks that customers who revoke their opt-out status be held to the following through the remainder of the MEEIA 2019-21 program, expiring with the implementation of a fourth cycle MEEIA program:

A customer who wishes to participate in Ameren Missouri's demand-response programming may revoke its opt-out from the costs and benefits of the Company's demand-side programs by providing written notice to the utility and the manager of energy resources department of the commission. If a customer only provides notice of its revocation of opt-out to Ameren Missouri, the Company shall forward a copy of the written notification to the manager of the energy resources department of the commission. A customer who participates in demand-side programs, including demand response, shall be required to participate in demand-side programs funding for a period of three (3) years following the last date the customer received a demand-side incentive or a service. Participation shall be determined based on the premise location regardless of the ownership of the premise.

**WHEREFORE,** Ameren Missouri respectfully requests that the Commission give expedited treatment to these requested variances and issue a decision by June 7, 2020, granting the requested variance of 20 CSR 4240-4.017 (the 60-day notice requirement), and the timing requirements of 20 CSR 4240-20.094(7)(K) until a fourth cycle MEEIA is approved for the Company, which will allow customers to revoke their MEEIA opt-outs out of cycle in order to participate in demand response program seasons through the life of the MEEIA 2019-21 program.

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<sup>16</sup> 20 CSR 4240-2.060(4)(C) provides that an application for a waiver or variance must provide "[t]he name of any public utility affected by the variance or waiver."



Respectfully submitted,

/s/ Paula N. Johnson

Paula N. Johnson, #68963  
Senior Corporate Counsel  
1901 Chouteau Avenue, MC 1310  
St. Louis, Missouri 63166-6149  
(314) 554-3533 (phone)  
(314) 554-4014 (facsimile)  
[amerenmoservice@ameren.com](mailto:amerenmoservice@ameren.com)

ATTORNEY FOR UNION ELECTRIC  
COMPANY d/b/a AMEREN MISSOURI

## **CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the following on this 7th day of May, 2020.

General Counsel's Office  
Missouri Public Service Commission  
P.O. Box 360  
200 Madison Street, Suite 800  
Jefferson City, Missouri 65102  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

Office of the Public Counsel  
P.O. Box 2230  
200 Madison Street, Suite 650  
Jefferson City, MO 65102-2230  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

*/s/ Paula N. Johnson* \_\_\_\_\_

Paula N. Johnson