BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of KCP&L Greater Missouri Operations Company's Application for Approval of Demand-Side Programs and for Authority to Establish a Demand-Side Programs Investment Mechanism.	)))))	File No. EO-2012-0009

AMEREN MISSOURI'S RESPONSE TO STAFF MOTION
FOR COMMISSION DETERMINATIONS ON VARIANCES

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company), and for its *Response to Staff Motion for Commission Determinations on Variances* (*Response*), states as follows:

1. On January 30, 2012, most parties to this case (including the Staff of the Missouri Public Service Commission (Staff)) agreed to a *Jointly Proposed Procedural Schedule* which was filed with the Missouri Public Service Commission (Commission). The Commission issued an order approving the proposed procedural schedule the next day, with the order becoming effective February 7, 2012.

2. On February 6, 2012, the Staff filed a *Motion for Commission Determinations on Variances* (*Staff Motion*). The *Staff Motion* argues that KCP&L Greater Missouri Operations Company's (GMO) Missouri Energy Efficiency Investment Act (MEEIA) Application failed to demonstrate good cause for the variances it has requested and that it failed to request certain variances that the Staff believes are necessary. The *Staff Motion* proposes a new procedural schedule for determining variances and argues that the 120 days contemplated by the Commission's MEEIA regulations for processing this case does not include time for determination of requests for variances.

3. It appears Staff is reconsidering its support for the jointly agreed upon

procedural schedule. The *Staff Motion* asks the Commission to find that the 120 days found in the Commission's MEEIA regulations (4 CSR 240-20.094(3)) "…has not yet begun to lapse." (*Staff Motion*, p. 14.) It also asks the Commission to order GMO to re-file its variance requests and allow Staff 30 days to review the requests and file a recommendation. The approved procedural schedule requires rebuttal testimony to be filed on March 15, 2012. But *Staff's Motion* is completely at odds with the agreed-upon date for filing rebuttal testimony because, presuming Staff's proposal is accepted, the variance requests could not yet be resolved by the time that testimony is due. The bottom line is that the Staff's argument that the 120 days prescribed by 4 CSR 240-20.094(3) does not begin to run until *after* variance requests have been ruled upon would, if accepted, *render the ordered procedural schedule meaningless*. This demonstrates that the Staff, by agreeing to the procedural schedule, has given up the right to argue that the 120 days has not yet begun to run.

4. In addition, the *Jointly Proposed Procedural Schedule* cites as a basis for good cause for extending the 120 day timeline, the fact that GMO has requested variances. The pleading reads, "Additionally, certain parties allege that the Company's Application requires more analysis due to the number of variances requested. The additional time to analyze the Application would serve a remedial purpose and allow the Parties to complete a thorough review and submit recommendations to the Commission." (*Jointly Proposed Procedural Schedule*, p. 4.) For Staff to now argue that the variance issue must be taken up *outside* of the ordered procedural schedule is in direct conflict with the agreement that good cause existed to extend the 120 deadline so that a "thorough review" and recommendations (regarding the variances) could be made to the Commission. The Commission has already ordered a procedural schedule in this

case which contemplates providing time for the parties to review requested variances, and the Staff should be held to the schedule to which it agreed.

5. Further, the variance requests are supported by the analysis contained in GMO's MEEIA filing and it would be nonsensical to address the variances without considering the substance of the MEEIA filing at the same time. Common sense dictates that the *Staff Motion* be rejected in favor of the direct approach of taking the variance requests under advisement along with the rest of the case, with the Commission to then rule upon whether it will approve GMO's requested DSIM with the variances, or will only approve a DSIM without some or all of the variances. That this is what is contemplated is borne out by another provision of the regulations which makes clear that if the DSIM the utility proposes is not approved as proposed, the utility retains the right not to implement it. *See* 4 CSR 240-20.094(2)(B). Put another way, the DSIM GMO proposes is one with the variances. It is that DSIM that is at issue in this case. The Commission is not bound to approve that particular DSIM or to approve the variances, but the Commission is required to evaluate that DSIM that has been proposed; that is, one that includes the variances.[1]

6. Other provisions of the regulations also demonstrate that the variance requests must be taken with the rest of the case and that the 120 days begins to run when the application is filed and the variances are requested. For example, 4 CSR 240-20.094 (3) provides that "[t]he commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans ***within one hundred twenty (120) days of the filing of an application*** under this section…" [emphasis added.] The language of the regulation could not be clearer; the 120 days begins on the date of the filing of an application. In addition, the regulations explicitly allow for variances for good cause shown and do not

[1] The Commission must, however, ensure that its decision complies with the mandates contained in MEEIA.

contain any requirement that the requests for variances be filed or ruled upon outside of the 120 days set forth in the rules. Staff's argument is that the 120 days does not begin until after requested variances are addressed is illogical and inconsistent with the applicable regulations, and should be rejected by the Commission.

7. As an alternative argument, the Staff claims that GMO has not demonstrated good cause for the requested variances. While the Courts as well as this Commission have applied a variety of formulations of "good cause" – including some of the principles the Staff cites and other principles the Staff does *not* cite – the Missouri Supreme Court has declared that, at its core, "good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer to which the decision is committed." *Wilson v. M.E. Morris*, 369 S.W.2d 402, 407 (Mo. 1963). The circumstances of this case are that GMO's MEEIA filing as a whole explains in great detail why it is requesting the DSIM at issue, and why it is designed as it is designed. The filing as a whole justifies (i.e., provides good cause for) the variances. If the Commission finds that design to be appropriate, then it will find, in its discretion under the circumstances of this case, that the variances are appropriate. Put another way, whether the variances are justified and whether the DSIM at issue (as described in the overall MEEIA filing) should be approved are questions that are inextricably bound together and should not be separated. To do so – to adopt the Staff's proposal – would be to create a procedural conundrum which is neither necessary nor appropriate

WHEREFORE, Ameren Missouri respectfully requests that the Commission deny the *Staff Motion* and order the parties to comply with the procedural schedule already ordered in this case.

Respectfully submitted,

/s/ Wendy K Tatro

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Ameren Missouri's Application for Intervention was served via electronic mail (e-mail) on this 17th day of February 2012, on

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