

**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)

SIERRA CLUB'S INITIAL POST-HEARING BRIEF

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This case is about the future of the largest energy efficiency program in the state of Missouri. Union Electric Company d/b/a Ameren Missouri (“Ameren” or “the Company”) is nearing the end of its first three-year cycle of efficiency programs approved under the Missouri Energy Efficiency Investment Act (“MEEIA”). These programs have yielded substantial benefits to Ameren and its customers. As Ameren has found, energy efficiency lowers system costs, reduces emissions, and provides customers with an opportunity to save energy in their homes and businesses. The Company is on track to exceed the savings goals in its Cycle 1 plan and those outlined in the MEEIA rules.

Despite this progress, Ameren proposed an energy efficiency plan for the next three years (“Cycle 2 Plan” or “Plan”) that represents a huge step backwards. Compared to Cycle 1, Ameren cut energy savings by nearly 50 percent while keeping its budget fairly steady. Driven by a potential study that constrained and underestimated the amount of savings Ameren could achieve, the Company proposed essentially zero annual growth in savings throughout the three-year period. No party (other than Ameren) supported Ameren’s proposal and most of the parties that presented testimony on the Plan – including Staff, the Office of the Public Counsel (“OPC”), Sierra Club, and Natural Resources Defense Council (“NRDC”) – concluded that it did not reflect a goal of achieving all cost-effective energy savings, as MEEIA requires.

As a result of settlement negotiations, no party is now asking the Commission to approve or reject the Plan. Rather, two sets of parties are asking the Commission to modify the Plan in different ways, as reflected in the two non-unanimous, contested stipulations before the Commission. Ultimately, as the MEEIA rules provide, Ameren will decide whether to accept any modifications.

Despite the differences between the stipulations, many, if not most, of the parties recognize the substantial benefits that energy efficiency provides and the prudence of investing in this least cost, least risk resource. And parties supporting either stipulation have stated that the savings levels on the table do not reflect all cost-effective efficiency.¹ To achieve the goal of MEEIA, additional cost-effective savings must be pursued.

This is a difficult case with numerous complex, technical issues, and both stipulations reflect compromises. A key question is which proposal, or provisions within the proposals, best represents progress toward achieving all cost-effective energy efficiency. In light of the low savings presented in both sets of proposed modifications, Sierra Club believes that it is important to institute a process through which (i) Ameren's energy savings estimates can be increased, along with associated incentives (in addition to a separate incentive component), and (ii) some of the underlying assumptions that constrained energy efficiency in Ameren's Plan can be reassessed. The Non-Utility Stipulation provides for such a process.

The Non-Utility Stipulation also includes a role for evaluation, measurement and verification ("EM&V") in the most contentious aspect of this case – the throughput disincentive ("TD") mechanism.² Sierra Club supports the three-legged stool of cost recovery for efficiency reflected in MEEIA – program costs, removing disincentives and providing performance-based incentives. General support for these components appears near universal in this case. But how best to design these recovery mechanisms, particularly the TD mechanism, is hotly contested. Using EM&V to ensure that the money utilities recover to account for lost electric sales due to energy efficiency reflects the revenue that is lost is consistent with the MEEIA rules and best

¹ See, e.g., Tr. at 117:22-118:6 (Renew Missouri); 462:10-11, 471:9-22 (Sierra Club); 680:21-681:11 (NRDC).

² It appears that one major area of disagreement concerning the modified TD in the Non-Utility Stipulation is resolvable in that Staff has agreed to rebasing in a manner that coincides with the way the Company sets billing determinants in the applicable rate case. See Tr. at 799:25-800:5.

practice for this type of mechanism. However, revenue decoupling presents a better and simpler option for addressing Ameren's existing financial disincentive to pursue energy efficiency.

Sierra Club strongly supports continued investment in energy efficiency resources in Missouri, including Ameren's service territory, for the benefit of the utility system, customers and the environment. Energy efficiency will play an increasingly vital role in the state's energy mix, providing a low-cost pathway for compliance with greenhouse gas regulations. As a result, it is important to ensure that the energy efficiency plans under MEEIA move toward the ultimate goal: all cost-effective demand-side savings. The Non-Utility Stipulation provides a process for doing so. Sierra Club also believes that Ameren's efficiency programs should continue even if a modified plan differs in some ways from the Non-Utility Stipulation. Thus, if the Commission decides to modify Ameren's Plan in a way that differs from the Non-Utility Stipulation, Sierra Club urges the Commission to include in its suite of modifications the outlined expert-based process to provide a pathway to increased savings in 2017 and 2018, in addition to cost recovery components.

II. PROCEDURAL BACKGROUND

On December 22, 2014, Ameren submitted an application for Commission approval of its Cycle 2 Plan, demand-side investment mechanism ("DSIM"), and Technical Reference Manual ("TRM"). In its Plan, Ameren proposed a set of ten programs projected to save roughly 426 GWh over three years, along with a budget of roughly \$135 Million.³

On March 20, 2015, several parties filed rebuttal testimony in response to Ameren's proposal. No party supported the Plan as filed. A common theme across many parties' rebuttal testimony was that Ameren's proposed savings levels were too low and the Plan did not represent

³ Exhibit No. 100 at 6.

all cost-effective energy efficiency savings.⁴ The Company and other parties responded in surrebuttal testimony filed on April 27, 2015.

The Commission rescheduled the evidentiary hearing, originally set to begin on May 27, 2015, to allow settlement discussions to continue. All-party settlement negotiations were unsuccessful.

On June 30, 2015, Ameren, Missouri Division of Energy (“DE”), NRDC, KCP&L, KCP&L-GMO, and United for Missouri (“UFM”) filed a non-unanimous stipulation and agreement (“Utility Stipulation”).⁵ The stipulation proposes to modify Ameren’s Plan in several ways and includes planned energy savings of about 584 GWh under a budget of \$197 Million.⁶ The stipulation includes an agreement to collaborate to identify additional cost-effective energy savings for program years 2017 and 2018.⁷ Several parties filed timely objections to the agreement, effectively converting the Utility Stipulation into a non-binding joint statement of position.⁸

On July 7, 2015, OPC, Staff, Renew Missouri, Midwest Energy Consumers Group (“MECG”), and Missouri Industrial Energy Consumers (“MIEC”) filed a non-unanimous stipulation and agreement (“Non-Utility Stipulation”), which was amended the next day.⁹ Sierra Club indicated its support for this stipulation in its amended statement of position.¹⁰ The Non-Utility Stipulation includes increased savings of 459 GWh with a budget of \$148.3 million.¹¹ Like the Utility Stipulation, it proposes further collaboration among stakeholders to identify greater

⁴ See, e.g., Exhibit Nos. 300 at 4:8-11; 708 at 3:1-4; 800 at 3:15-17; 1201 at 4:8-12.

⁵ Dkt Item No. 100.

⁶ *Id.* at p. 3 ¶ 7.

⁷ *Id.* at p. 9 ¶ 15.

⁸ 4 CSR 240-2.115(2)(D).

⁹ Dkt. Item Nos. 115, 119. All future references to the Non-Utility Stipulation refer to the amended version.

¹⁰ Dkt. Item No. 157.

¹¹ Dkt. Item No. 119 at Appendix A.

savings for program years 2017 and 2018.¹² The Non-Utility Stipulation also proposes a third-party mediated expert panel process through which increases in the projected energy savings for 2017 and 2018, with particular focus on program participation rates, could be recommended to the Commission for approval, along with an additional, energy-based performance incentive.¹³ Several parties filed timely objections to the agreement, again effectively converting the Stipulation into a non-binding joint statement of position.¹⁴ Staff, OPC, Ameren, and DE filed supplemental testimony on the stipulations.

The evidentiary hearing took place on July 20-22, 2015. Because the stipulations are nonbinding joint positions, all issues remain for determination after the hearing.¹⁵

III. LEGAL FRAMEWORK

The Missouri Energy Efficiency Investment Act¹⁶ is designed “to encourage electric utilities to invest in energy efficiency measures that will reduce the need to invest in energy production infrastructure.”¹⁷ MEEIA is intended to spur utilities to develop and implement demand-side resources “with a goal of achieving all cost-effective demand-side savings,”¹⁸ to help consumers cut their energy use and costs, and to avoid costly generation.

MEEIA establishes that it is Missouri’s policy “to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable

¹² Dkt item No. 119 at p. 4, ¶ 3.

¹³ *Id.* at § 2.d.

¹⁴ 4 CSR 240-2.115(2)(D).

¹⁵ *Id.*

¹⁶ § 393.1075, R.S.Mo,

¹⁷ *In the Matter of Union Elec. Co., d/b/a Ameren Missouri’s Tariff to Increase Its Revenues for Elec. Serv.*, 320 P.U.R. 4th 330 *20 (Apr. 29, 2015).

¹⁸ § 393.1075.4, R.S.Mo.

and prudent costs of delivering cost-effective demand-side programs.”¹⁹ In support of this policy, MEEIA provides that the Commission shall:²⁰

- (1) Provide timely cost recovery for utilities;
- (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers’ incentives to use energy more efficiently; and
- (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.

These three cost recovery components are provided through a DSIM.²¹

Under MEEIA, the Commission must permit utilities to implement programs with a goal of achieving all cost-effective demand-side savings.²² The Commission’s rules implementing MEEIA establish guidelines to review a utility’s progress toward achieving this goal.²³ By comparing a utility’s plan to the savings guidelines – the greater of a utility’s realistic achievable savings potential and the goals outlined in the rule – the Commission can determine whether a utility’s proposal is “consistent with” the goal of achieving all cost-effective demand-side savings.²⁴

The Commission can approve, approve with modifications acceptable to the utility, or reject a proposed demand-side program plan, including programs and budgets.²⁵ Further, both the utility and Commission have the authority to approve, accept, or reject any proposal to establish,

¹⁹ § 393.1075.3, R.S.Mo.

²⁰ *Id.* at § 393.1075.3(1)-(3).

²¹ 4 CSR 240-20.093(1)(M).

²² § 393.1075.4, R.S.Mo.

²³ 4 CSR 240-20.094(2).

²⁴ *Id.* at 240-20.094(2), (3)(A).

²⁵ 4 CSR 240-20.094(1)(J), (3).

continue, or modify a DSIM or proposed alternative DSIM.²⁶ Accordingly, the utility has the option of accepting or rejecting modifications from the Commission.

Finally, 4 CSR 240-2.115(2)(d) provides that non-unanimous stipulations and agreements to which a timely objection has been filed are “considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.”

IV. ARGUMENT

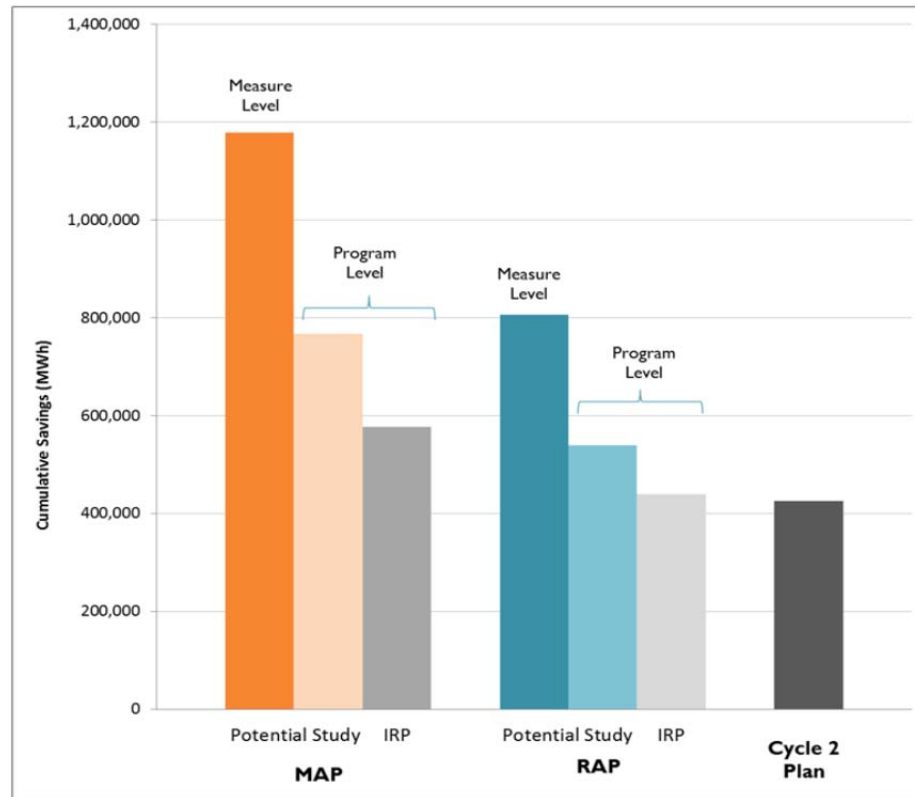
A. The Commission should modify Ameren’s Efficiency Plan pursuant to the process outlined in the Non-Utility Stipulation to ensure a path forward for increasing the Plan’s savings levels for 2017-2018.

Ameren initiated this case with a three-year plan that cut energy savings in half from Cycle 1 and included zero annual growth. The Plan is based largely on a 2013 EnerNOC Demand-Side Management Market Potential Study (“potential study”) that significantly understates the level of achievable savings. Subsequent analyses in Ameren’s 2014 Integrated Resource Plan (“IRP”) and program planning process resulted in further savings cuts. As Sierra Club witness Tim Woolf testified and illustrated in the below graph: “In each of its efficiency analyses, especially the Potential Study and the 2014 IRP, Ameren makes several assumptions, modifications and adjustments that chip away at the efficiency potential until the remaining savings that are deemed to be realistic and cost-effective are a small fraction of the original estimates.”²⁷ The result is an Ameren Cycle 2 Plan that fails to demonstrate progress toward achieving all cost-effective demand-side savings.

²⁶ 4 CSR 240-20.093(2)(B); *see also* 4 CSR 240-20.094(3)(E).

²⁷ Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 17:7-10.

Figure 4.2: Program Level v. Measure Level Savings (2016-2018)²⁸



Working from this low starting point, the stipulations propose modifications to increase the energy savings in Ameren’s Plan. Both stipulations expand Ameren’s low-income multifamily offering and add a Small Business Direct Install program, which Sierra Club supports. The Utility Stipulation increases savings (and budgets) further by adding compact fluorescent light bulb incentives to the residential lighting program, combined heat and power (“CHP”) as an eligible business customer measure, and public facilities as eligible program participants.²⁹ While directionally correct, these increases are (i) limited by the analysis underlying the Company’s initial plan, (ii) still reflect a significant reduction from current savings levels, and (iii) are insufficient.

²⁸ *Id.* at 18:1-4.

²⁹ Dkt. Item No. 100 at ¶¶ 11, 13, 14.

To address the low savings levels presented in the Company's Plan and in the stipulations, the Non-Utility Stipulation provides a path forward for identifying and pursuing additional cost-effective energy efficiency, and increasing the low savings targets for 2017 and 2018.³⁰ Through stakeholder collaboration *and* independent expert analysis, ways to increase savings in the latter years of the Plan can be explored and higher savings targets can be approved, along with an additional performance incentive. This effort to identify and capture additional savings will help Ameren pursue MEEIA's goal of achieving all cost-effective demand-side savings.

1. The savings levels presented in Ameren's Plan – based on a potential study that significantly underestimates achievable savings – are too low.

The Company's Plan, as filed, is a significant step back for energy efficiency in Missouri, especially in light of the progress the Company has made to date. Ameren proposed to save roughly 426 GWh over a three-year period at a flat savings rate of roughly 0.4% of electricity sales per year.³¹ This represents a sharp decline from Ameren's current Cycle 1 Plan, which includes a total energy savings target of roughly 793 GWh, or 0.7-0.9% of sales per year.³² The drop is even steeper when compared to what the Company has been achieving in Cycle 1. The Company has saved nearly 700 GWh in 2013 and 2014 (135% of its planned savings for these years) and is on track to save more than 1,000 GWh, or roughly 0.8-1% of sales.³³ Whereas Ameren is expected to exceed the MEEIA savings guidelines for Cycle 1, Ameren's Plan for Cycle 2 amounts to just 27-36% of the savings guidelines for 2016-2018.³⁴

³⁰ Dkt. Item No. 119 at ¶¶ 2-3.

³¹ Exhibit No. 100 at 6.

³² Exhibit No. 100, Ameren's Plan, at 5.

³³ Exhibit No. 112, Surrebuttal Testimony of Richard A. Voytas, at 136:1-2; Exhibit No. 803, Supplemental Rebuttal Testimony of Geoff Marke, at 4:14-15.

³⁴ 4 CSR 240-20.094(2) (providing annual savings goals of 1.1-1.5% of total annual energy during Cycle 2)

The 2013 potential study served as the basis by which Ameren developed its Plan. As several witnesses explained in testimony, the study contained limitations, both in its assumptions and methodologies, that dramatically reduced the level of achievable savings.³⁵ Sierra Club witness Woolf described three categories of concerns about the study: (i) the limits of the economic potential results; (ii) the methodology and assumptions used for deriving the realistically achievable potential (“RAP”) and the maximum achievable potential (“MAP”) estimates; and (iii) the overly conservative assumptions used to determine program-level savings, which resulted in a dramatic reduction in the level of achievable program savings.³⁶

Of these, a common concern across expert witnesses was the study’s participation rate assumptions, which are “the primary reason why the MAP and RAP portfolios understate achievable efficiency savings.”³⁷ Mr. Woolf described several limitations of the study’s methodology for deriving participation rates.³⁸ One example, which was discussed extensively at the hearing, is the reduction in market adoption rates for measures in the RAP and MAP portfolios.³⁹ Adoption rates were significantly reduced to account for response bias based on a 2010 proprietary study that has not, at least to Ameren’s knowledge, been substantiated.⁴⁰ As

³⁵ See, e.g., Exhibit Nos. 301, Rebuttal Testimony of Phil Mosenthal, at 13:16-16:16; 1200, Rebuttal Testimony of Tim Woolf, at 20:9-29:23; 800, Rebuttal Testimony of Geoff Marke, at 13-17.

³⁶ Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 22:3-8.

³⁷ *Id.* at 24:3-4; Exhibit No. 301, Rebuttal Testimony of Phil Mosenthal, at 15:13-14 (Mosenthal testifying that “[o]ne significant contributor to EnerNOC’s low potential estimate is its approach for estimating take rates.”); Exhibit No. 800, Rebuttal Testimony of Geoff Marke, at 3:15-17 (Marke, in reference to the study’s downward take-rate adjustments, testifying that “Ameren Missouri’s MEEIA Cycle II proposal is predicated on artificially downward adjusted saving targets that understate the overall potential for energy efficiency adoption.”).

³⁸ Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 24:12-25:23; see also Tr. at 405:13-407:5.

³⁹ *Id.* at 26:3-8; Exhibit No. 301, Rebuttal Testimony of Phil Mosenthal, at 15:15-16:2 (observing that the estimated take rates for the RAP scenario are 29-39% for the residential sector and 38-49% for the commercial sector).

⁴⁰ Tr. at 179:23-180:8.

witnesses Woolf and Mosenthal explained, this adjustment was inappropriate and eliminated a large portion of savings.⁴¹

Savings estimates resulting from the potential study were further reduced through the IRP process. As Mr. Woolf explained, the limited RAP and MAP scenarios Ameren analyzed in its IRP understate the cost-effective efficiency potential.⁴² Further, although Ameren's own analysis showed that the MAP scenario would lower electricity costs as compared to RAP, Ameren selected the RAP portfolio based on unreasonable cost and risk assumptions.⁴³

The end result of the Company's analyses – from potential study to program planning – is a Cycle 2 Plan that falls short on savings and does not demonstrate progress toward achieving all cost-effective demand-side savings.

2. The savings levels presented in the stipulations – constrained by Ameren's flawed Plan – are too low.

As stated above, both stipulations call for increased savings. However, due to the extremely low starting point of the Company's Plan, neither proposed increase is sufficient.

The Utility Stipulation proposes the greater increase, modifying the savings from 426 GWh to 584 GWh.⁴⁴ While Ameren frames this as a 37% increase in savings, as compared to the Company's Plan, what the Company actually proposes is a roughly 25% decrease in planned savings as compared to Cycle 1. The decrease is even greater when considering Ameren's savings during the first two years of Cycle 1. Ameren's willingness to work collaboratively with stakeholders to identify additional cost-effective energy savings is helpful, but a stronger commitment is needed to ensure that increased savings levels are considered and, ultimately,

⁴¹ See, e.g., Tr. at 404:11-16 (Woolf testifying), 683:19-684:19 (Mosenthal testifying).

⁴² Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 33:13-19; see also at Exhibit No. 710, Surrebuttal Testimony of John Rogers, at 12:10-12 (Staff witness Rogers agreeing with Mr. Woolf).

⁴³ Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 34:5-36:2.

⁴⁴ Dkt Item No. 100 at § 3.

achieved.

Because neither of the three-year savings estimates in the stipulations are sufficient alone, it is important to reassess the low estimates so as to increase savings during the life of the three-year plan. The Non-Utility Stipulation provides for such a process.⁴⁵

3. The process outlined in the Non-Utility Stipulation presents the best path forward to achieving increased energy efficiency savings in Cycle 2.

The Non-Utility Stipulation provides the best option to increase energy efficiency savings for program years 2017 and 2018. Both stipulations provide for collaboration to identify additional cost-effective energy savings strategies in the beginning of 2016.⁴⁶ However, a more structured process, aided by independent experts, is needed.

As outlined in section 2(d) of the Non-Utility Stipulation, a third-party mediator would convene a panel of experts to recommend possible increases in projected energy savings for 2017 and 2018, with particular focus on program participation rates—a hotly contested aspect of Ameren’s potential study.⁴⁷ By utilizing this expert-driven “Delphi method”⁴⁸ to examine overall savings and participation rates, the stipulation establishes a way to work toward increased energy savings in 2017-2018 *while continuing the programs in 2016*. As Sierra Club witness Woolf testified, processes like this are “highly valuable” and can be “one of the most effective way[s] to make progress here.”⁴⁹

Based on the results of the panel, the mediator will recommend 2017 and 2018 savings levels in a report to the Commission to be filed by April 15, 2016 and to which parties can respond

⁴⁵ Tr. at 738:17-20 (Staff witness Rogers testifying that “[t]he expectation and the hope is that through the collaborative process and the Delphi panel, that we would make significant progress towards achieving that objective of MEEIA”).

⁴⁶ Dkt Item Nos. 100 at ¶ 15 and 119 at ¶ 3.

⁴⁷ Dkt. Item No. 119 at ¶ 2(d).

⁴⁸ Tr. at 623:2-3. *See also id.* at 186:5-9.

⁴⁹ Tr. at 469:4-9.

via comments.⁵⁰ The Commission may then adjust the savings and approve an additional, associated performance incentive.⁵¹

Sierra Club recognizes that the Non-Utility Stipulation would not immediately result in significantly higher savings as compared to Ameren's Plan. However, given the low levels of savings that currently are on the table, reassessing what Ameren can achieve in 2017-2018 based on (i) independent expert assistance *and* (ii) company-stakeholder collaboration provides promise of a plan that can move toward achieving all cost-effective savings. For this reason, Sierra Club supports the process outlined in the Non-Utility Stipulation.

B. Determining the Benefits that Energy Efficiency Provides to All Customers Should Not be Based on a Rate Impact Screen.

MEEIA provides that a utility can recover the costs of a demand-side program if the programs are "approved by the commission, result in energy or 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."⁵² One issue that has been raised in this case is whether the Company's proposed programs are "beneficial to all customers," consistent with MEEIA. In discussing this issue, Staff referred to a rate impact analysis derived from Ameren data.⁵³ Sierra Club believes that Ameren should pursue additional customer benefits through increased savings. However, a rate impact analysis disregards the system-wide benefits that efficiency programs provide to *all* customers and, therefore, should not be used to screen energy efficiency programs or determine cost recovery.

⁵⁰ Dkt. Item No. 119 at ¶ 2(d)(ii).

⁵¹ *Id.* at ¶ 2(d)(iii)-(iv).

⁵² § 393.1075.4, R.S.Mo; *see also* 4 CSR 240-20.093(2)(C)).

⁵³ Exhibit No. 709, Corrected Rebuttal of John Rogers, at 18-30; Exhibit No. 712, Rebuttal to Supplemental Testimony of John Rogers, at 6-9. Tr. at 786:12-14.

1. Cost-Effective Energy Efficiency Benefits All Customers.

Although the Company should be pursuing higher levels of savings, which would provide increased customer benefits, the cost-effective programs in both stipulations provide system-wide benefits for all customers, including customers who would not participate.⁵⁴ As Company witness Barnes testified, Ameren's IRP analysis shows that energy efficiency is a least-cost resource.⁵⁵ Energy efficiency can help defer or avoid the need for new costly capacity, including generation, transmission, and distribution capacity.⁵⁶ Ameren's data also shows that energy efficiency lowers the Company's present value revenue requirement ("PVR") and reduces levelized rates.⁵⁷ This benefits all customers.⁵⁸

Energy efficiency provides additional benefits to all customers. As Sierra Club witness Woolf explained in testimony, energy efficiency is widely recognized as a relatively low-risk resource to implement that also reduces the risk that other resources carry.⁵⁹ For example, efficiency can mitigate risks associated with complying with the Clean Power Plan and other environmental regulations.⁶⁰ These risk mitigation benefits are not typically accounted for in cost-

⁵⁴ As MEEIA recognizes, low-income programs do not need to be cost effective if they serve the public interest. § 393.1075.4, R.S.Mo. The multi-family low-income programs in both proposals meet this requirement and provide significant benefits.

⁵⁵ Tr. at 503:18-21; *see also id.* at 419:1-4 (Woolf testifying to the same).

⁵⁶ Tr. 401:9-13 (Woolf testifying), 782:12-18 (Rogers testifying).

⁵⁷ Exhibit No. 114; Tr. at 229:5-25.

⁵⁸ Indeed, Ameren's IRP analysis shows that a resource plan with more efficiency than what Ameren selected would result in a lower PVR. Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 30:17-19.

⁵⁹ Exhibit No. 1201, Surrebuttal Testimony of Tim Woolf, at 5:15-6:14, Schedule TW-4.

⁶⁰ *Id.* at 6:8-11; *see also* Exhibit No. 104, Surrebuttal Testimony of S. Hande Berk, at 13 ("[E]nergy efficiency will almost certainly be part of [the Clean Power Plan] compliance plan. Whatever shape or form the final rule takes, if we do not include cost effective energy efficiency programs as part of our plan, it is quite probable that the cost of compliance to our customers will be higher.").

effectiveness or rate impact analyses. Additionally, reduced air pollutant emissions and improved public health benefits would accrue to all customers regardless of program participation.⁶¹

2. Requiring programs to pass a rate impact screen is inconsistent with MEEIA.

During the hearing, Staff witness Rogers testified that he does not think that a rate impact analysis should be used to screen additional efficiency programs that may be identified through the process outlined in the non-utility stipulation.⁶² Sierra Club agrees. A rate impact screen is inconsistent with MEEIA and its implementing regulations. The total resource cost (“TRC”) test is “a preferred cost-effectiveness test,”⁶³ in Missouri. As explained below, the utility cost test (“UCT”) can also be used when assessing cost effectiveness.⁶⁴ A rate impact screen would likely render these tests meaningless by eliminating cost-effective programs that would pass the TRC and/or UCT and save ratepayers millions of dollars.⁶⁵ As such, a rate impact test conflicts with MEEIA and should not be used.

However, this does not mean that concerns about rate impacts and customer equity (among participating and non-participating customers) should be ignored. Rather, such concerns should be addressed through improved program design and efforts to increase participation,⁶⁶ which is a key driver of the process outlined in the Non-Utility Stipulation.

⁶¹ Tr. at 741:1-5 (Staff witness Rogers testifying), 781:2-4 (same); Exhibit No. 201, Surrebuttal Testimony of Martin Hyman, at 12:14-14:10.

⁶² See Tr. at 737:17-22 (Staff witness Rogers testifying that additional cost-effective programs identified through the process outlined in the Non-Utility Stipulation should not have to pass a rate impact analysis).

⁶³ § 393.1075.4, R.S.Mo; see also 4 CSR 240-20.094(3)(A) and 4 CSR 240-20.094(3)(C).

⁶⁴ Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 46-52.

⁶⁵ Tr. at 408:5-9, 409:8-18. For an explanation of why a rate impact test improperly accounts for lost revenues, see *id.* at 408:10-409:7.

⁶⁶ Exhibit No. 1201, Surrebuttal Testimony of Tim Woolf, at 19:1-20:5.

C. Ameren Should Consider the Results of the Utility Cost Test in its Efficiency Analysis.⁶⁷

The purpose of MEEIA is to encourage utilities to implement demand-side resources with “a goal of achieving all cost-effective demand-side savings.”⁶⁸ Thus, determining what constitutes cost-effective savings is a critical inquiry. As explained in Mr. Woolf’s testimony, Ameren takes an overly restrictive view of what is cost effective in its efficiency analysis, which contributes to the Company’s unreasonably low savings projections. Specifically, Ameren eliminated from consideration (both in its potential study and program development) programs that are cost effective under the UCT but not TRC. This practice is inconsistent with MEEIA, which permits programs that pass either test. Ameren should fix this flaw in its analysis going forward, particularly as it considers additional cost-effective programs during the next three years.

The TRC test examines a set of costs and benefits of a given demand-side program.⁶⁹ Specifically, under MEEIA, the test “compares the sum of avoided utility costs and avoided probable environmental compliance costs [i.e., benefits] to the sum of all incremental costs of end-use measures that are implemented due to the program [i.e., costs].”⁷⁰ The UCT, also known as the revenue requirements test, focuses on program costs and benefits from the utility perspective.⁷¹ As Ameren explained in its initial filing, “[t]he only difference between the TRC and UCT is that the TRC includes full incremental measure costs whereas the UCT only includes the portion of

⁶⁷ This section addresses Sierra Club’s issue presented in the List of Issues. *See* Dkt. Item No. 83.

⁶⁸ § 393.1075.4, R.S.Mo.

⁶⁹ However, it is important to recognize that many applications of the TRC do not capture all of the benefits of efficiency, such as fossil fuel and water savings, which skews the test against energy efficiency. Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 22:15-23:2; *see also* Exhibit No. 201, Surrebuttal Testimony of Martin Hyman, at 14:3-5 (observing that certain non-energy benefits could feasibly be incorporated into the TRC as a component of avoided utility or participant costs).

⁷⁰ § 393.1075.2(6), R.S.Mo. *See also* Exhibit No. 100 at 18.

⁷¹ *Id.*; 4 CSR 240-3.64(1)(Y).

incremental costs paid for with utility incentives.”⁷² That is, the TRC examines both the utility and participant costs and the UCT examines the former.⁷³

MEEIA addresses cost effectiveness in the context of program approval and cost recovery.

It provides, in relevant part:

The 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... *The commission shall consider the total resource cost test as a preferred cost-effectiveness test.* Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest. *Nothing herein shall preclude the approval of demand-side programs that do not meet the test if the costs of the program above the level determined to be cost-effective are funded by the customers participating in the program or through tax or other governmental credits or incentives specifically designed for that purpose.*⁷⁴

Ameren has interpreted this language to mean that efficiency programs must pass the TRC test to be eligible for cost recovery.⁷⁵ As a result, Ameren used the TRC test to determine the economic potential in its potential study, eliminating measures and programs that did not pass the TRC test,⁷⁶ and only included programs in its Plan that passed the TRC test.⁷⁷ Programs that pass the UCT but not the TRC were eliminated from consideration.

Ameren improperly disregards the UCT. After directing the Commission to consider the TRC test a preferred cost-effectiveness test, the statute states that “[n]othing herein shall preclude the approval of demand-side programs that do not meet the test if the costs of the program above

⁷² Exhibit No. 100 at 18.

⁷³ Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 47:21-23.

⁷⁴ § 393.1075.4, R.S.Mo (emphases added); *see also* 4 CSR 240-20.094(3)(C).

⁷⁵ Exhibit No. 111, Surrebuttal Testimony of Ingrid Rohmund, at 11:20-12:5 (noting an exception for low-income programs or general education campaigns).

⁷⁶ Tr. at 152:3-12; Exhibit No. 111, Surrebuttal Testimony of Ingrid Rohmund, at 11:20-12:5.

⁷⁷ Exhibit No. 100 at 92.

the level determined to be cost-effective [under the TRC] are funded by the customers participating in the program.”⁷⁸ This describes programs that pass the UCT but not the TRC.⁷⁹

Sierra Club does not contest that the TRC test is a preferred cost-effectiveness test under MEEIA that should be considered. However, consistent with MEEIA, Ameren should also consider programs and measures that pass the UCT but not the TRC when evaluating its efficiency potential and program portfolio, particularly in the context of identifying additional cost-effective savings during the next three years. This is especially important in light of the declining savings potential reflected in Ameren’s potential study, IRP and program plan, and the UCT scores provided.⁸⁰

D. The DSIM and Decoupling.

The most contentious part of this case concerns the competing throughput disincentive mechanisms in the stipulations.⁸¹ Although it appears that one major point of disagreement no longer exists between Staff and Ameren,⁸² the two most active parties on this issue, a consensus has not been reached. If a TD mechanism is used to account for revenue reductions caused by energy efficiency,⁸³ Sierra Club supports the use of EM&V. As Sierra Club witness Woolf explained, when using this type of a mechanism, it is “very important” to use EM&V to

⁷⁸ § 393.1075.4, R.S.Mo.

⁷⁹ See Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 48 (providing an example illustrating the relationship between the TRC and UCT); see also Exhibit No. 710, Surrebuttal Testimony of John Rogers, at 9:18-23 (testifying that under the MEEIA rules, the Commission should approve a program that passes the UCT but not the TRC).

⁸⁰ See Exhibit No. 1200, Rebuttal Testimony of Tim Woolf, at 18, Fig. 4.2 and at 44, Fig. 6.2.

⁸¹ See Tr. at 517:21-24 (Ameren witness Barnes testifying “I believe that the probably biggest bone of contention and probably the biggest difference between these two stipulations is relating to this throughput disincentive and the ability to record it”).

⁸² See Tr. at 799:25-800:5 (Staff witness Kliethermes testifying that Staff agrees to rebasing in a manner that coincides with the way the Company sets billing determinants in the applicable rate case).

⁸³ As discussed below, Sierra Club believes that revenue decoupling is a better approach.

demonstrate the actual amount of lost revenues recovered.”⁸⁴ Indeed, every lost-revenue adjustment mechanism that Mr. Woolf knows of includes a true-up based on EM&V.⁸⁵ Sierra Club also supports a performance-based incentive to encourage successful programs that save energy and demand, and reach as many customers as possible.

1. Revenue decoupling is a better way to address the throughput disincentive.

As discussed above, designing and applying a throughput disincentive mechanism to ensure that it achieves its intended purpose – to remove the utility disincentive to pursue energy efficiency by allowing it to recover revenues from sales that were reduced or “lost” due to energy efficiency – is difficult. As this case and prior MEEIA cases demonstrate, these mechanisms raise complex legal, policy and technical issues that require a substantial amount of resources to resolve and, even then, there is often a lack of confidence in the results.⁸⁶

Revenue decoupling offers a simpler way to achieve the goals of the proposed throughput disincentive mechanisms. For example, unlike the mechanisms at issue in this case, revenue decoupling does not require EM&V.⁸⁷ Rather, under decoupling, there are typically annual adjustments between rate cases in which the utility and regulators true-up the amount of revenues that were allowed based upon the actual sales that occurred during the prior year.⁸⁸ As Staff

⁸⁴ Tr. at 474:23. *See also* Exhibit No. 301, Rebuttal Testimony of Phil Mosenthal, at 44:12-18 (testifying that “[t]he most concerning aspect” of the proposed DSIM structure is that it does not true-up the throughput incentive net shared benefit award based on evaluated data, which could lead Ameren to over collect).

⁸⁵ Tr. at 400:11-16 (“[A]ll of the lost revenue adjustment mechanisms that I am familiar with require EM&V to be performed ... so that the Company is compensated for what it’s actually lost and not a hypothetical estimate.”).

⁸⁶ *See, e.g.*, Exhibit No. 300, Rebuttal Testimony of Ashok Gupta, at 5-6.

⁸⁷ Tr. 448:9-11.

⁸⁸ *Id.* at 474:6-11.

witness Rogers testified at hearing, “[w]e wouldn’t be sitting here today if there was a form of revenue decoupling that had been vetted and had become a part of this process.”⁸⁹

While decoupling is not on the table in this docket, the issues raised in the case underscore the need to explore this option. As such, this case affirms the importance of the recently-initiated Commission investigation into the structure and operation of possible revenue decoupling mechanisms for use in Missouri.⁹⁰ Indeed, numerous parties in this case, including Ameren,⁹¹ Staff,⁹² DE,⁹³ NRDC,⁹⁴ Renew Missouri⁹⁵ and Sierra Club,⁹⁶ have expressed willingness to at least explore revenue decoupling.⁹⁷ Sierra Club strongly supports the Commission’s pending investigation and believes that it could result in a simple, consensus approach to addressing and overcoming the throughput disincentive for utilities in a manner that protects consumers.

V. CONCLUSION

For the foregoing reasons, Sierra Club recommends that the Commission modify Ameren’s Cycle 2 Plan in accordance with provisions in the Non-Utility Stipulation to provide a pathway to increase savings in furtherance of the goal of achieving all cost-effective demand-side savings.

⁸⁹ Tr. 776:19-22; *see also id.* at 39:10-13 (Ameren counsel stating, in response to a commission question, that if done properly, a decoupling mechanism “should remove the throughput disincentive ... it would take great steps to resolving issues”)

⁹⁰ *See generally* File No. AW-2015-0282.

⁹¹ Exhibit No. 100 at 93; Tr. at 39:10-16.

⁹² Tr. at 78:19-24.

⁹³ Tr. at 46:24-47:1.

⁹⁴ *See generally* Exhibit No 300, Rebuttal Testimony of Ashok Gupta.

⁹⁵ Tr. at 123:25-124:3.

⁹⁶ Tr. at 475:3-9.

⁹⁷ MIEC opposes decoupling. *See* Exhibit No. 1000, Surrebuttal Testimony of Maurice Brubaker, at 8:9-10.

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Respectfully submitted,

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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.

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