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 Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA.	))))	File No. EO-2015-0055

REPLY BRIEF OF AMEREN MISSOURI

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TABLE OF CONTENTS

I. INTRODUCTION....................1

II. THROUGHPUT DISINCENTIVE AND GAAP REQUIREMENTS....................7

A. The Staff's Proposed TD Mechanism Causes a Degradation of the Company's Earnings, Preventing a Proper Alignment of Incentives as Required by MEEIA. 7

B. Ameren Missouri must Follow GAAP and, in particular, the specific GAAP applicable to demand-side programs. 8

C. The Staff's Desperate Attempt to Avoid the Application of ASC 980-605-25. 9

D. The Early Evolution of the Staff's Position on Throughput Disincentive Revenue Recognition. 10

E. The Next Phase of the Evolution of the Staff's Position. 12

F. Evaluation of Staff's Latest Position. 14

1. The standard itself refutes Mr. Oligschlaeger's claim. 14

2. Regulatory assets are used in Staff's TD Mechanism, and the Company's TD-NSB Mechanism, by the operation of the MEEIA rider. 15

3. There is no support for Mr. Oligschlaeger's latest opinion....................16

4. The substantial and competent evidence of record overwhelmingly shows that ASC 980-605-25 controls, and that it cannot be met using the Staff's TD Mechanism. ..23

G. The Company has more than carried its burden of proof. 27

III. UNSUBSTANTIATED ALLEGATIONS OF OVER-EARNING 29

IV. PROGRAM SAVINGS AND THE POTENTIAL STUDY 36

A. Unsupported Criticism of the Savings Target....................36

B. OPC's Criticism of YouGov Data....................43

C. Comparisons to MEEIA Cycle 1....................45

D. MAP vs. RAP....................47

E. Ameren Missouri's savings targets, as modified by the June 30 Stipulation, are well supported and should be approved. 48

V. DEMAND BASED PERFORMANCE INCENTIVE 49

VI. THE MEEIA PORTFOLIO AND PROGRAM ISSUES 54

A. Multi-Family Low Income Program..54

B. Compact Fluorescent Lighting 57

C. Public Facilities 64

D. Combined Heat and Power 66

E. Stakeholder Collaborative vs. Delphi Panel 68

F. Brightergy Issue 75

VII. CONCLUSION 76

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I. INTRODUCTION

Staff, Office of the Public Counsel ("OPC"), Sierra Club and Renew Missouri urge the Commission to reject Ameren Missouri's plan and the modifications made to it pursuant to the June 30, 2015 Stipulation[1], developed and signed by a diverse group of parties. Staff, OPC and Renew Missouri argue that Ameren Missouri has threatened to eliminate energy efficiency if the Commission does not approve its plan.[2] Ameren Missouri has *never* said it will wholesale abandon energy efficiency as a resource if its proposal is not accepted. What Ameren Missouri has said is that the terms of the self-titled Non-Utility Stipulation *are not acceptable modifications*[3] to Ameren Missouri's energy efficiency plan originally filed by the Company.[4] Further, the Company worked with other parties to reach compromise and made significant modifications to its original proposal in response to concerns raised by other parties in this

[1] Non-Unanimous Stipulation and Agreement dated June 30, 2015. The parties to the stipulation include Ameren Missouri, Missouri Department of Economic Development – Division of Energy, Natural Resources Defense Council, Kansas City Power and Light Company, Kansas City Power and Light Greater Missouri Operations Company, and United For Missouri, Inc. The two competing Stipulations are referred to as the June 30 Stipulation (which Ameren Missouri supports) and the Non-Utility Stipulation (which the Company opposes). Capitalized terms and phrases used in this Reply Brief have the meanings given to them in the Company's Initial Brief.
[2] Staff Initial Brief, p. 25; OPC Initial Brief, p. 15; Renew Missouri Initial Brief, p. 2.
[3] 4 C.S.R. 240-20.094(3).
[4] To the extent policies, with respect to MEEIA, change as a result of modifications to Ameren Missouri's Plan, it could have the practical result of a delay, or even indefinite deferral, of the implementation of MEEIA Cycle 2. It is difficult to speculate about what the Company's reaction to any unspecified modification to the Plan would be and any modification would be reviewed in light of the facts at issue in this case and other pending considerations.

docket. Ameren Missouri's efforts included waiving the 120-day time limit imposed by the Commission's rules on the Commission's review of its MEEIA plan, and further agreeing that the originally-scheduled evidentiary hearings should be delayed to allow further discussions among the parties in an effort to resolve the differences that existed.

In its Initial Brief, OPC cites the language penned by Justice Roberts in his highly publicized 29-page dissent of the Supreme Court's decision to require states to recognize same-sex marriages. We have no idea what this has to do with energy efficiency in Missouri; in fact, we are fairly confidently it has nothing to do with it. What it does demonstrate is that OPC is set on making this issue divisive among the parties – as if OPC's opening statement didn't already establish this intent. While modern political debate may be characterized by partisanship and polarity – the type of discourse OPC brings to this case does little to resolve complicated issues of energy policy. Ameren Missouri made a good faith effort to resolve this case amicably with all parties. OPC argues that Ameren Missouri understated savings goals intentionally – even though it offers no empirical evidence to support such a claim. OPC repeatedly characterizes energy efficiency in its Initial Brief as a "lucrative" endeavor for the utility. OPC has no support for this claim either. OPC gets it backwards; under present rate structures, when Customers use more electricity than is assumed when setting rates, the utility earns more. The definition of "lucrative" is "(adjective) producing a great deal of profit." Paying customers, installers and retailors nearly $200 million dollars over three years to promote less usage product produces not a great deal of profit, but instead produces loss – this is the fundamental problem that must be addressed in this case. No amount of derision can eviscerate this underlying truth from the policy issues at bar.

Claims that the Non-Utility Stipulation offers financial benefits are unfounded. For example, Renew Missouri writes as follows: "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."[5] Renew Missouri offers no factual support or other citation for its accusation. Further, the question is not about spite or ideology, it is about the impact of the way rates are designed on financial statements, which Renew Missouri implicitly recognizes given its support for decoupling. Further, as evidenced by the admission of Sierra Club witness Mr. Woolf, in states where decoupling is present, there is no need to measure energy savings through EM&V and yet Sierra Club would argue this arrangement is very much beneficial to customers.[6]

The present rates contain what is called a throughput incentive – the more electricity Ameren Missouri sells, the more revenue it generates – and this is by design. This design presents a clear *opportunity cost* for any utility considering the permissive addition of energy efficiency as a resource under the MEEIA framework. Hence, the threshold concern is not how much financially the Company could stand to gain through the adoption of the MEEIA Cycle 2 plan, but how much it stands to lose. Ameren Missouri has a fiduciary duty to the investors that ultimately provide the equity investments that it must have to invest in infrastructure and otherwise provide service to its customers – and that includes not spending money to lose money. We make no apologies for this fact, we owe it to our retirees, institutional investors (who manage funds, pensions, retirement plans), and individual investors, to be steadfast in our stewardship of the financial viability of Ameren Missouri as an investment. The terms of MEEIA itself recognize this, and recognize its appropriateness.

[5] Renew Missouri Initial Brief, p. 15.
[6] Tr. 448 to p. 449 (Woolf Cross).

In this case, the Company brought forth a reasoned plan, that has been improved by the modifications contained in the June 30, 2015 Stipulation. The modified plan includes realistic savings goals, benefits for *all* customers, benefits for the environment, reasonable ratemaking mechanisms in line with the MEEIA, and a process by which the Company can work with stakeholders to identify additional savings.

The plan as modified includes the continued use of a TD-NSB mechanism to address the throughput disincentive that is inherent in any electric utility's efforts to induce its customers to use less energy which then lower the utility's revenues. A very similar mechanism was approved by the Commission in the EO-2012-0142 case, and is presently in place for the two largest investor owned electric utilities in Missouri. The Company has made incremental changes to that mechanism to improve it, but the mechanism remains true to the framework that the Commission approved in 2012. OPC, Staff, and Renew Missouri now ask the Commission to radically change the way it implements MEEIA, and go so far as to argue over Ameren Missouri's objection that their newly devised unrealized revenue mechanism is good for the utility, even though under that mechanism the Company's earnings would suffer as and when the energy efficiency programs are operated.

Make no mistake, whether it be through decoupling, TD-NSB, or some other mechanism, customers will see an energy efficiency charge of a few dollars a month. None of these methods are free. However, the specific and detailed mechanics of any mechanism has critically important impacts on Ameren Missouri, because the manner in which the billed charges are accounted for will make or break the financial proposition as it pertains to implementing utility-sponsored energy efficiency. If, as is the case with the Non-Utility Stipulation, the utility is not

able to timely reflect the impact of the throughput disincentive on its financial statement – then energy efficiency becomes untenable.

The TD-NSB is not the only issue in this case. In reviewing the briefs of the other parties, what is not said is almost as important as what was said. Two signatory parties to the Non-Utility Stipulation are environmental organizations, yet neither offers any substantive explanation as to the relative environmental merits of the competing proposals.[7] As Mr. Woolf on behalf of the Sierra Club agreed, the June 30 Stipulation provides for public facility energy efficiency, additional residential lighting, combined heat and power ("CHP") and a larger program budget – all of which are advocated by Sierra Club and offer environmental benefits beyond those contained in the Non-Utility Stipulation.[8] As noted in the original filing, as of 2013 Ameren Missouri energy efficiency programs have reduced CO2 emissions by approximately 600,000 tons.[9] Approval of Ameren Missouri's modified plan in this case will yield more substantial emissions reductions in the future.

In the sections that follow, Ameren Missouri responds to the criticisms levied by the parties advocating adoption of the Non-Utility Stipulation. As set forth below, the evidence overwhelmingly supports the following findings:

- The Non-Utility Stipulation TD Mechanism[10] is inconsistent with MEEIA as it fails to align incentives between customers and the Company;
- Staff ignores the accounting implications for Ameren Missouri and accordingly the Staff's TD Mechanism fails to meet the requirements of MEEIA;

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[7] Renew Missouri opines that a demand-based energy efficiency is better for the environment rather than an energy approach. Renew Missouri Initial Brief, p. 18. There is no factual support offered for this position. In fact, logically, reducing the use of peaking generators which are gas-fired would seem less important than around-the-clock energy usage that implicates base load coal and nuclear units – which seem to more likely be the targets of environmental advocates. See Section [V] infra.
[8] Tr. p. 425 to p. 34 (Woolf Cross).
[9] Ex. 100, p. 3 (Plan).
[10] *Amended Non-Utility Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2*, ¶6 (hereinafter, the "Staff's TD Mechanism").

- Throughout the case, Staff's proposal was a moving target, culminating in its proposed TD Mechanism, which is a belated proposal that cannot be implemented consistent with MEEIA;
- Staff and OPC's concerns regarding avoided costs and MEEIA Cycle 1 are unsubstantiated;
- Ameren Missouri is the only party to offer a potential study, which provided a sound foundation upon which a savings goal has been established in this case;
- The signatories to the Non-Utility Stipulation appropriately included combined heat and power, additional compact fluorescent lights ("CFL") bulbs for residential use and public facilities as non-free rider participants;
- The Company's performance incentive based primarily upon energy savings goals is superior to the demand-only incentive the Non-Utility Stipulation presents.
- The "Delphi Panel" concept in the Non-Utility Stipulation, whereby a savings goal will be set by an outsourced panel of experts, is not needed and is ill-advised; and
- The June 30 Stipulation sets for a framework upon which additional collaborative discussions can be used to develop additional savings opportunities.

As explained below, the parties opposed to the June 30, 2015 Stipulation cannot sustain their criticisms with evidence, fact, or persuasive policy. Ameren Missouri has made a good faith effort at meeting the other parties and stakeholders in the middle, including changing every aspect of its proposal – including cost recovery mechanics – in order to set forth a sustainable basis for the continued advancement of utility-sponsored energy efficiency in Missouri. The question is not whether Ameren Missouri desires to utilize energy efficiency as a resource – it does. But to do so, as MEEIA recognizes, the appropriate regulatory framework must be in place. Incentives must be aligned by neutralizing the throughput disincentive, and an appropriate earnings opportunity must be implemented so that, as MEEIA's policy states, Ameren Missouri is truly able to value demand-side investments equally with alternative investments it could make in supply-side or other infrastructure. Approval of Ameren Missouri's modified plan reflects such a framework, and its approval will act in furtherance of all cost-effective savings consistent with the MEEIA policy goal.

II. THROUGHPUT DISINCENTIVE AND GAAP REQUIREMENTS

A. The Staff's Proposed TD Mechanism Causes a Degradation of the Company's Earnings, Preventing a Proper Alignment of Incentives as Required by MEEIA.

The Company and the Staff agree: if the Company's operation of demand-side programs causes its earnings to be negatively impacted as those programs operate, the Company has a significant disincentive to pursuing energy efficiency.[11] Consequently, it is self-evident that if the Commission were to approve a DSIM under which the Company has a significant disincentive to pursuing energy efficiency, the Commission will have failed to discharge one of its three key obligations under MEEIA: to align the utility's financial incentives with helping its customers use energy more efficiently and in a manner that sustains and enhances utility customers' incentives to use energy more efficiently.[12]

The Commission removed that disincentive when it approved the Company's MEEIA Cycle 1 plan because the Commission approved a DSIM that allowed recognition on the Company's financial statements of the revenues associated with the throughput disincentive. The revenues could be recognized "because of the deemed energy savings from the use of the Technical Resource Manual . . ."[13]; i.e., because, as explained below, the revenues were not derived from estimates subject to after-the-fact revision. In this case, the Staff[14] asks the Commission to reverse course and to require what Mr. Oligschlaeger calls a "retrospective review and true-up"[15] of all, or at least some portion, of the revenues the Company must receive if the throughput disincentive is to be removed. In support of its reversal, the Staff has

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[11] Tr. p. 850, l. 15 to p. 851, l. 22.
[12] §393.1075.3(2), RSMo. Citations to the RSMo. are to the Revised Statutes of Missouri (Cum. Supp. 2013), unless otherwise noted.
[13] Ex. 717, p. 7, l. 6-7 (Ditman Surrebuttal, File No. EO-2012-0142).
[14] Others, including OPC and NRDC, support the Staff's arguments, but it is only Staff that makes any serious effort to advance those arguments.
[15] Ex. 705, p. 15, l. 3 (Oligschlaeger Rebuttal).

(creatively) developed a rationale, based on what Staff witness Oligschlaeger calls his "professional judgment,"[16] for why the applicable accounting principles allow revenue recognition under the Staff's TD Mechanism, which calculates an *estimated* "unrealized revenue" value that is contingent upon completion of EM&V at a later date. As outlined below, under the controlling accounting standards, the revenues associated with the throughput disincentive cannot, for any reason, be subject to after-the-fact change if they are to be recognized on the Company's financial statements. Therefore, any throughput disincentive mechanism that allows an after-the-fact change will cause earnings degradation as the demand-side programs are operated and will, in turn, fail to remove the throughput disincentive. Before demonstrating why this is so, we will first set out the applicable accounting requirements.

B. Ameren Missouri must Follow GAAP and, in particular, the specific GAAP applicable to demand-side programs.

Ameren Missouri is required by the United States Securities and Exchange Commission ("SEC") to publish financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the post-Enron/Sarbanes-Oxley world, deviation from GAAP is simply not allowed.[17] Moreover, the GAAP requirements applicable to the recognition of revenues (as compared to incurred costs (e.g., outlays by the utility of monies to buy coal, respond to a storm, etc.)) are tougher (i.e., more conservative) than they used to be.[18] GAAP requirements are reflected in Accounting Standards Codifications ("ASC").[19] If a specific ASC applies to a given situation it must be followed to the exclusion of any more general standards

[16] Tr. p. 847, l. 2-11.
[17] Ex. 109, p. 5, 1. 14-16 (Hoffman Surrebuttal).
[18] Tr. p. 871, l. 3-15.
[19] Ex. 109, p. 4, l. 13-17.

that, in the absence of the specific standard, might otherwise apply.[20] There is only one ASC that addresses demand-side programs: ASC 980-605-25. As explained in detail by Ms. Barnes, ASC 980-605-25 is by its express terms a revenue recognition standard ("980-605-25 Recognition"[21]). It applies to "alternative revenue programs," of which there are two major types (A & B).[22] One type A program is a program that adjust billings "to compensate the utility for demand-side management initiatives…."[23] A MEEIA program plan is plainly such a program given that it involves the compensation of the utility for the financial impacts of demand-side programs. Consequently, specific GAAP standards exist to govern such programs, and those standards must be followed to the exclusion of more general GAAP guidance.[24] There is in effect no controversy about whether we are dealing with a demand-side initiative in this case, or about whether we are dealing with mechanisms to provide compensation for its financial effects.

C. The Staff's Desperate Attempt to Avoid the Application of ASC 980-605-25.

The Staff is attempting to convince the Commission that ASC 980-605-25 doesn't apply because, as discussed further below, if ASC 980-605-25 applies (and it does) the Staff's TD Mechanism does not properly address the throughput disincentive and the Company's interests are simply not aligned with helping its customers use less energy. Under those circumstances, it follows that it would be impossible for the Commission to discharge its duty to align incentives, as MEEIA requires.

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[20] Ex. 103, p. 11, l. 6-11 (citing ASC 105-10, which requires specific GAAP provisions to be applied in lieu of general ones) (Barnes Rebuttal to Non-Utility Stipulation).
[21] Ex. 101, Sch. LMB-2 (Barnes Surrebuttal).
[22] *Id.* As Ms. Barnes explains, there are two types of revenues utilities receive from customers; those arising from the traditional setting of base rates, and those where regulators approve additional, alternative revenues, as is the case here. Ex. 103, p. 7, l. 5-8.
[23] *Id.*
[24] Ex. 103, p. 11, l. 4-11.

The linchpin of Staff's attempt to extricate itself from the plain terms of ASC 980-605-25 was not articulated by Staff at all until OPC was allowed to engage in "friendly cross-examination" of Mr. Oligschlaeger (Tr. p. 844), eliciting the opinion from Mr. Oligschlaeger that ASC 980-605-25 was merely intended to provide "guidelines for when companies can book regulatory assets to account for future expected revenues as a result of ongoing demand-side programs . . .."[25] Since (incorrectly) Mr. Oligschlaeger thinks there are no regulatory assets involved in the throughput disincentive mechanisms at issue in this case, he appears to think that this new opinion gets the Staff out from under the requirements of ASC 980-605-25 and thus "disproves" the Company's application of GAAP. For several reasons, as we explain below, Mr. Oligschlaeger is mistaken.

D. The Early Evolution of the Staff's Position on Throughput Disincentive Revenue Recognition.

Mr. Oligschlaeger's new argument is truly remarkable in view of the history of the Staff's overall (and his own) positions regarding the throughput disincentive in the Company's MEEIA Cycle 1 case, and in this case. In the MEEIA Cycle 1 case, the Staff objected to a TD-NSB mechanism that was very similar to the one proposed by the Company now,[26] arguing instead that a traditional regulatory asset (essentially a traditional AAO or tracker approach with deferrals that would not be addressed until a later rate case) should be used instead.[27] Confronted with the fact that Staff's then-proposal would fail *all* of the criteria for revenue recognition under ASC 980-605-25, a settlement was reached in the MEEIA Cycle 1 case that

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[25] Tr. p. 844, l. 13-17.

[26] The only substantive difference is that, in this case pursuant to the June 30th Stipulation, the Company has split the recovery of the TD-NSB into two tiers.

[27] Ex. 705, p. 14, l. 17-19; Ex. 717.

did not utilize a traditional regulatory asset. Notably, the Staff also abandoned Mr. Oligschlaeger's MEEIA Cycle 1 regulatory asset approach in this case.

In this case, initially, Mr. Oligschlaeger proposed (if the Commission opted to approve the Company's MEEIA Cycle 2 plan at all – the Staff's primary position was to oppose approval of the plan outright) to subject the Company's TD-NSB share to after-the-fact revision based on actual rate case timing and outcomes.[28] Except for subjecting those rate case parameters to after-the-fact revision, Mr. Oligschlaeger did not propose any changes to the Company's original TD-NSB mechanism. As Ms. Barnes explained in her surrebuttal testimony (as did Mr. Hoffman), while the Staff's new position allowed the Staff's proposal to satisfy two of the three criteria under ASC 980-605-25, it still prevented the TD-NSB from being objectively determinable (because it would be revised after-the-fact) and thus still prevented recognition of the revenues. Consequently, the throughput disincentive would remain under Mr. Oligschlaeger's approach.

In support of this initial MEEIA Cycle 2 proposal, at no time did Mr. Oligschlaeger opine that his new proposal escaped the application of ASC 980-605-25.[29] In fact, his rebuttal testimony basically said that if there are GAAP restrictions not satisfied by his proposal, the Commission (for policy reasons) should just preclude recovery of the TD-NSB entirely (except on an after-the-fact basis).[30] In fact, had Mr. Oligschlaeger's opinion been that ASC 980-605-25 did not apply at all, then there would have been no need for him to stop at insisting on after-the-fact review and true-up of just the rate case parameters. This is because Mr. Oligschlaeger could also have insisted on after-the-fact application of EM&V results because, according to him, all

[28] This is because, as explained elsewhere in this brief, the TD-NSB percentages can vary depending on actual rate case timing and outcomes and, when creating a TD-NSB mechanism, certain assumptions have to be about those rate case parameters.
[29] Mr. Oligschlaeger vaguely said the "Staff believed" that the revenues could be recognized, but he provided no support or explanation of any kind as to why that was so.
[30] Ex.705, p. 15, l. 9-20.

that has to be done to recognize revenues is to provide cash based on an estimated amount of lost revenue, or so he now says.

After Mr. Oligschlaeger made his initial proposal in this case (his second attempt overall to properly address the throughput disincentive), the Company took steps to address the concerns he had expressed about rate case timing/outcome assumptions, and reflected those attempts in the June 30 Stipulation.[31] The steps it took were to modify its original TD-NSB mechanism to implement it in two tiers, with tier 1 set using very conservative assumptions that virtually eliminated any risk to customers of "over-recovery" (or risk to the Company of "under-recovery), and that included a tier 2 that because of the assumptions in tier 1, also presented very little risk such that the Company believed it could recognize the material throughput disincentive its programs presented and thus move forward with energy efficiency in MEEIA Cycle 2.[32] It's not just the Company who contends that its tier 1/tier 2 modification to its TD-NSB mechanism addressed the concerns Mr. Oligschlaeger had expressed; Mr. Oligschlaeger agrees:

> **Q. And you would agree that the modified TDNSB mechanism in ... the June 30th stipulation addresses, for the most part, the concerns you had expressed in your Rebuttal Testimony Correct [sic]?**
>
> A. The concerns I had expressed, yes.[33]

Mr. Oligschlaeger went on to agree that under the modified TD-NSB proposal, the "risk of over-recovery is low."[34]

E. The Next Phase of the Evolution of the Staff's Position.

Mr. Oligschlaeger, however, was still not satisfied. In his July 9, 2015 Supplemental Direct Testimony (filed in response to the June 30 Stipulation), he moved the goal posts again,

[31] EFIS Item No. 100, *Non-Unanimous Stipulation.*
[32] Ex. 102, pp. 5-6 (Barnes Supplemental); Ex. 105, p. 3 (Davis Supplemental).
[33] Tr. p. 853, l. 18-23.
[34] *Id.* p. 854, l. 11-17.

becoming the sponsor of a Staff position (which Mr. Oligschlaeger himself had not sponsored up until that time) that in order to satisfy the Staff, after-the-fact EM&V must be applied to the throughput disincentive.[35] Functionally, this is precisely the same position taken by Mr. Oligschlaeger in MEEIA Cycle 1. However, despite having been fully apprised (in MEEIA Cycle 1, by Ms. Barnes and Mr. Ditman; in MEEIA Cycle 2, by Ms. Barnes and Mr. Hoffman (still supported by PwC)) of the Company's firmly-held belief about the applicable GAAP requirements, when he filed his July 9 testimony Mr. Oligschlaeger still failed to opine that the Company's accounting opinions were wrong. Instead, he essentially told this Commission that he didn't care whether or not the Company was right about the accounting; that it didn't matter, once again falling back to the position that even if the Company was right, for policy reasons the Commission ought not fully eliminate the throughput disincentive but instead should apply what Mr. Oligschlaeger would no doubt indicate are "more traditional" regulatory approaches.[36] Moreover, for the first time in any testimony presented to the Commission, Mr. Oligschlaeger suggested that it was the Company's fault that he was taking the position he was taking regarding the applicable accounting standards, claiming that the Company had not presented Staff with "sufficient evidence" to allow him to make a "final judgment" (about the accounting issues) at that time.[37] His claimed inability to make a "final judgment" was despite the fact that these critically-important accounting issues were raised and vetted in great detail more than three years ago. By the time July 9, 2015 came along, Mr. Oligschlaeger had already had literally years to explore them – including eight months to explore them in this case – and he had been afforded

[35] Ex. 706, p. 4, l. 3-19/
[36] *Id.,* pp. 5-6.
[37] *Id.*, p. 6, l. 18-21. We address these claims later in this brief.

multiple opportunities to file testimony to present findings, support and opinions, yet he failed to do so. He has belatedly attempted to do so now.

F. Evaluation of Staff's Latest Position.

As noted, despite only days earlier (after years of opportunity) claiming an inability to draw conclusions, Mr. Oligschlaeger moved the goal posts yet again on what it would take to satisfy the Staff when counsel for OPC fed him the friendly questions we referenced earlier on "cross-examination." As noted, only then did Mr. Oligschlaeger *finally* express an opinion about the accounting standard, and claim that ASC 980-605-25 simply did not apply to the Staff's latest proposal because, he argued, the Staff was not proposing use of a regulatory asset. The evidence in this case completely refutes Mr. Oligschlaeger's claim that ASC 980-605-25 only applies if a deferral, using a traditional regulatory asset, is the mechanism employed to address the throughput disincentive.

1. The standard itself refutes Mr. Oligschlaeger's claim.

First, nowhere in ASC 980-605-25 does the standard suggest as much; indeed, it expressly states otherwise because by its terms it applies when there is an "automatic adjustment of future rates."[38] Utilization of traditional regulatory assets (where the Commission authorizes a deferral and then later decides on recovery) does *not* result in an automatic adjustment of rates. Consequently, it simply cannot be, as Mr. Oligschlaeger's opinion suggests, that the standard only applies to traditional regulatory asset treatment and, inferentially does not apply to the Staff's TD Mechanism. It does apply to the Staff's TD Mechanism because the Staff's mechanism provides revenues arising from a demand-side program plan, through the MEEIA

[38] Ex. 101, Sch. LMB-2 (Barnes Surrebuttal, subdivision 25-4.1).

rider (an automatic adjustment to rates). That mechanism is squarely within ASC 980-605-25, by its express terms.

2. Regulatory assets are used in Staff's TD Mechanism, and the Company's TD-NSB Mechanism, by the operation of the MEEIA rider.

Second, the operation of Ameren Missouri's MEEIA rider (and this would remain true under the Staff's TD Mechanism proposal which would also use the MEEIA rider) *does* involve use of a regulatory asset (or it could be a regulatory liability), just not in the way that most of us are used to thinking about it when AAOs or trackers are discussed. As Exhibit 715[39] shows, and as explained by Ms. Barnes during the hearing, there is a difference between the revenues billed and collected under the MEEIA rider because the rider is set once per year (in advance) with an estimated mix of measures, but then each month the actual installed measures become known, causing a variance between the throughput disincentive that should ultimately be recovered and the collected sums.[40] A regulatory asset (or liability) arises from that variance, but as and when revenues are recognized each month, the actual measures (and the throughput disincentive sum the Company can recognize as income) is known (i.e., is objectively determinable for each month's financial statements) so the correct (and final) revenues are recognized. This means that revenues that are being recognized are not estimated, but rather, they are final as they are recognized, even though a regulatory asset is used as part of the accounting. Consequently, it is simply not true that a regulatory asset is not utilized for either the Company's or the Staff's proposed throughput disincentive mechanism, causing Mr. Oligschlaeger's attempt to escape the application of ASC 980-605-25 to fail, since even he (under his new opinion) agrees that ASC 980-605-25 applies when a regulatory asset is used. The truth is, the application of ASC 980-

[39] Offered by the Staff.
[40] Tr. p. 526, l. 7 to p. 527, l. 19.

605-25 does not turn at all on whether a regulatory asset (of whatever nature) is used. It turns, as its provisions specifically indicate, on whether alternative revenues for, in this case, a demand-side initiative, is being provided by rate revenues. Here, such revenues are being provided and the standard applies.

3. There is no support for Mr. Oligschlaeger's latest opinion.

Third, the support Mr. Oligschlaeger points to—again, at the latest possible point in this case (on redirect examination when he and his counsel both know he can longer be cross-examined) – does not in any event support his claim that ASC 980-605-25 does not apply to the Staff TD Mechanism. One claimed item of support for his opinion is an excerpt provided by Ms. Barnes in response to a data request (which Staff had in its possession for about seven weeks before the hearings started) from the PricewaterhouseCoopers ("PwC") *Guide to Accounting for Utilities and Power Companies*. Mr. Oligschlaeger made no attempt to explain what in the Guide he claims supports his view, and tellingly his counsel didn't ask him which is surprising if, as he contends, the Guide supports him. Moreover, given that Staff waited until his redirect examination to bring it up, there was no opportunity for anyone (even the Commission) to ask him about it. Whatever language Mr. Oligschlaeger claims to rely upon, however, does not override the express terms of ASC 980-605-25, or the sworn testimony of PwC Audit Partner Stephen Ditman. Clearly, Mr. Ditmar, who actually works for PwC and actually uses and applies the PwC Guide, is in a far better position to state what it provides for (or doesn't), and to opine about ASC 980-605-25, than is Mr. Oligschlaeger.

Mr. Ditman's testimony (together with the terms of ASC 980-605-25 itself) completely refutes whatever claim Mr. Oligschlaeger may make about what the Guide means, and that testimony is of record in this case, having been offered by the Staff, without objection by the

Company.[41] To understand why requires one to critically examine what Mr. Oligschlaeger's opinion on the application of ASC 980-605-25 really is, and that is revealed by cross-examination at the hearing.

The Staff's TD Mechanism can, by the terms of the Non-Utility Stipulation, operate in one of two ways. Under the first approach, the mechanism would provide rate recovery of 2/3 of the estimated unrealized revenues each month, without any later retrospective review or true-up (through EM&V or otherwise). The remaining 1/3 of the estimated unrealized revenues would not be reflected in any charges to customers until after EM&V was later done. The other option under the Staff's TD Mechanism, which oddly is set out in footnote 4 of the Non-Utility Stipulation, would take the estimated unrealized revenues (100% of them) and reflect those in the MEEIA rider charges before EM&V is done, but as to 1/3 of them, refunds could be required as a result of the re-calculation that would have to occur later. We say it is odd that the other option is set out in a footnote, because we now know that it is *only* under the second option that Mr. Oligschlaeger contends the Company could recognize the revenues and avoid a degradation of its earnings. In other words, the Staff admits that the *primary* term of the Non-Utility Stipulation to address the throughput disincentive doesn't work because it doesn't align incentives. The second footnote option was therefore clearly an afterthought, but having (apparently) now realized the primary option doesn't work, the Staff appears to be searching for a way to rescue its TD Mechanism. We submit that the Non-Utility Stipulation's terms, together

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[41] It is ironic that in the Staff's Initial Brief they complain that Ms. Barnes' opinion about the application of ASC 980-605-25 is in part based upon information that is "hearsay in nature" Brief, p. 22. Yet when it suits them, the Staff offers Mr. Ditman's testimony, which if it shouldn't have been relied upon by Ms. Barnes, shouldn't have been offered by the Staff. Indeed, nor should the PwC Guide (attached to Ms. Barnes' DR response) be relied upon since no one from PwC is here to be questioned about it. Of course, Staff is just dead-wrong on its "hearsay in nature" complaints, as the Regulatory Law Judge recognized when he overruled objections to portions of Ms. Barnes' pre-filed testimony. Tr. p. 482, l. 19-20. Missouri law is clear: experts can rely upon information that would otherwise be hearsay as the basis for their opinions. §490.065, RSMo. (2000). That is precisely what Ms. Barnes did.

with the late evolution of the Staff's opinions, demonstrates the half-baked nature of the Staff's TD Mechanism, and the shaky foundation upon which Mr. Oligschlaeger's accounting judgments rest.

Just how shaky are those judgments? In addition to the reasons given earlier, consider what Mr. Oligschlaeger is telling the Commission; he is telling the Commission that if we use the first approach (not the footnote) the throughput disincentive is not fully addressed because ASC 980-605-25 applies, but if we use the second approach (in the footnote) it is fully addressed.[42] *What is the difference?* There is only one, and it turns entirely on whether the Company has possession of cash. In the second, footnote approach, the Company receives (provisionally) cash equal to an *estimate* of 100% of the unrealized revenues, whereas in the first approach the Company only receives cash (without later revision) 2/3 of the revenues. Put another way, *the Staff has completely hung its hat on whether the Company is receiving the cash*; if it is receiving 2/3 of the cash, it can only recognize 2/3 of the revenue, but if it is receiving 100% of the cash, it can (says the Staff) recognize all of the revenue.[43]

The Staff's position is remarkable and, frankly, absurd. Ameren Missouri keeps its books, and reports its financial results, on an accrual basis; its income doesn't depend on how much cash it does or doesn't receive or, conversely, that it pays or doesn't pay out.[44] The Staff's position is remarkable and, frankly, absurd. Ameren Missouri keeps its books, and reports its financial results, on an accrual basis; its income doesn't depend on how much cash it does or doesn't receive or, conversely, that it pays or doesn't pay out.[1] For example, if Ameren Missouri prepays an insurance premium its income isn't reduced by the whole premium just

[42] Tr. p. 860, l. 23 to p. 861, l. 15.
[43] *Id.,* p. 861, l. 16-23.
[44] *Id.,* p. 861, l. 24 to p. 862, l. 7.

because the cash was prepaid, but rather, it expenses the payment over the term of the insurance. The most basic understanding of accounting would confirm many other similar examples.

The most basic understanding of accounting would confirm many other similar examples. Indeed, if revenue recognition were as easy as Staff suggests (utilities can recognize as income every dollar of cash they receive or must recognize as an expense every dollar of cash they pay, as and when received and paid), then the post-Enron changes in the public reporting and accounting world would have no meaning at all because companies would find ways to get paid in cash up front allowing revenue recognition even if that cash had not actually yet been earned. Imagine how misleading it would be for a public utility to generate cash before fully earning it, or before the final sums due to it were fully known and to recognize it, at that time, as income, only to later not fully earn it or to have the final sums be less. The earlier investors who relied on a given level of income that included the cash that had not been earned or finally determined will have been misled, but "too late"; their investment will already have been made even though the true earnings were less. As Ms. Barnes testified:

> However, under Mr. Oligschlaeger's approach, the sums the Company would be allowed to retain to recover the throughput disincentive are not objectively determinable for the exact same reason as the amounts that the Staff's approach would have allowed in the MEEIA 1 case were not objectively determinable – the sums can be changed later based on retrospective consideration of EM&V. Consider what this means. In each quarter, as each program year progresses, the Company records revenues and consequently the earnings those revenues produce, reports them to the SEC and makes them public for all to see. Investors rely on those public financial statements. The Company knows exactly what the recordable revenues arising from the TD-NSB component are because it knows the number of measures (e.g., number of light bulbs) installed and it knows the deemed savings arising from each one. So at the end of each quarter and each reporting year, its financial statements are set because it was able to objectively determine the revenues.
>
> Under Mr. Oligschlaeger's proposal, this is not true. For example, EM&V for 2016 will not be completed until sometime in 2017 – probably many months into 2017. Yet Mr. Oligschlaeger's approach would mean that the revenues recognized in each of the quarters of 2016 and for the year as a whole will change

> sometime during the next year. The standard plainly requires that the revenues to be *reflected and reported on the financial statements* be objectively determinable *when the financial statements are issued*. Revenues that are subject to change later don't meet that standard. Instead, investors would be in the position of seeing revenues and earnings of $X, and making investment decisions based thereon, but wouldn't know until a significant time later if $X are really $X. This runs directly counter to not only the plain language of the standard, but also the significant emphasis of the SEC and external auditors interpreting FASB guidance on "being tough" on allowing revenue recognition on financial statements (emphasis added).[45]

Every one of those statements is just as true if the Company has an estimated (but subject to after-the-fact change) amount of cash in its possession as they are if it does not have the cash at all. Cash isn't the issue; it is revenue recognition.

The regulatory asset (or liability) explained by Ms. Barnes as noted earlier is another example of the cash received having nothing to do with the income recognized on a financial statement.[46] As Ms. Barnes explained, when a new MEEIA rider rate takes effect part of the rate is based on a forecasted mix of energy efficiency measures for the upcoming year. That mix, times the deemed energy savings from the TRM, produces a sum that is collected via the MEEIA rider rate. That rate produces cash receipts from customers, but the amount of revenue *recognized* on the income statement is a *different* sum, based upon the actual measures installed each month.[47] Cash collected does not equal revenue recognized.[48]

Understanding just how absurd the Staff's "if we only provide cash revenue can be recognized" argument is, one can easily see that the "support" Mr. Oligschlaeger relies upon provides no such support. While it was unclear at the time, it is now obvious that when Staff counsel asked Ms. Barnes to identify Mr. Ditman's testimony from the MEEIA Cycle 1 case and

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[45] Ex. 101, p. 21, l. 2 to p. 22, l. 3.
[46] Tr. pp. 526-527.
[47] Tr. p. 525, l. 19 to p. 527, l. 25.
[48] Tr. p. 528, l. 17-22.

offered it into the record, a foundation was likely being laid for the end-of-the-hearing and vague redirect of Mr. Oligschlaeger on his claim that the PwC Guide supported his judgment. With both exhibits in the record, Staff could argue that "something" in the PwC Guide supports Mr. Oligschlaeger, and then could argue that when Mr. Ditman was testifying in the MEEIA Cycle 1 case Staff had proposed a traditional regulatory asset and that in this case Staff was proposing something different, so what Mr. Ditman said at the time had no applicability to what the Staff was arguing for now. And, knowing that there would be no ability to cross-examine Mr. Oligschlaeger on this theory – since it was elicited on redirect – it seems quite apparent that the hope was that Mr. Oligschlaeger's vague testimony about the unidentified support for his view in the PwC Guide could somehow be tied back to Mr. Ditman's testimony in a way that would rebut the unequivocal and consistent opinion expressed by Ms. Barnes and Mr. Hoffman. However, ASC 980-605-25 and Mr. Ditman's testimony, which Staff offered into the record in this case, betray the Staff's attempt to avoid scrutiny of Mr. Oligschlaeger's latest theory.

While it is true that the Staff isn't proposing, in this case, to use a traditional regulatory asset with a deferral and later consideration for recovery, it is proposing a mechanism that, to use Mr. Ditman's words, is every bit as much "contingent upon the completion of evaluation, measurement and verification."[49] This violates ASC 980-605-25-4.2.b just as thoroughly as did applying after-the-fact EM&V did in the MEEIA Cycle 1 case. Mr. Ditman's own words, again, prove that this is so:

> The second condition[50] requires the revenue to be objectively determinable. Mr. Oligschlaeger's proposal specifically references the benefit as an 'estimate' that is contingent upon the completion of evaluation, measurement and verification. As I understand it, this means that the deemed energy savings reflected in the TRM will not be used for the final calculations but rather are dependent on the EM&V.

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[49] Ex. 717, p. 8, l. 4-5.
[50] The "second condition" is ASC 980-605-25-4 2.b. Ex. 101, Sch. LMB-2 (Barnes Surrebuttal).

> Consequently, pursuant to the second criteria, the aforementioned "estimate', contingent upon completion of an EMV at a later date, would not meet the authoritative guidance's objectively determinable criteria.[51]

Every single problem identified by Mr. Ditman associated with Staff's MEEIA Cycle 1 throughput disincentive proposal exists in the Staff's TD Mechanism here.[52] One-third of it is an estimate, and the deemed energy savings in the TRM will not be used for the final calculation of that one-third, which is just as "contingent upon the completion of evaluation, measurement and verification" as was the estimate referred to by Mr. Ditman in the MEEIA Cycle 1 case. Indeed, Mr. Ditman's conclusion that the Staff's proposal in the MEEIA Cycle 1 case was not objectively determinable had *absolutely nothing to do with whether or not a regulatory asset and deferral for later consideration was being proposed*, or some other means of recovery was being proposed. The problem presented by the deferrals, for consideration in a later rate case, that the particular regulatory asset approach advocated for by the Staff in that case presented arose under ASC 980-605-25-4.1.a and 4.3.c, not under 4.2.b. This is because that regulatory asset did not call for automatic adjustment of rates, so it failed 4.1.a.[53] In addition, that regulatory asset approach would not allow for collection within 24 months, which caused it to fail 4.3.c.[54]

The plain terms of ASC 980-605-25 and Mr. Ditman's testimony, which independently applied all three criteria, show that a mechanism, whether it be a regulatory asset or something else (including the Staff's TD Mechanism) could meet the criteria and allow revenue recognition, *but only if all three criteria are satisfied*. The bottom line is while the Staff's latest proposal satisfies criteria one and three, it still fails the second criterion. And, it still must satisfy the

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[51] Ex. 717, p. 8, l. 2-9.

[52] PwC has already opined that the Staff's TD Mechanism runs afoul of ASC 980-605-25, and revenues that are subject to later change cannot be recognized. Ex. 103, p. 11, l. 22 to p. 12, l. 2.

[53] Ex. 717, p. 7, l. 19-22 ("[A]n order that only approves a regulatory asset would not meet the automatic adjustment criteria").

[54] *Id.*, p. 8, l. 10-13.

second because it is patently a mechanism to "compensate the utility for demand-side initiatives."[55]

This brings us full circle. The PwC Guide, cannot mean what Mr. Oligschlaeger claims because if it did, Mr. Ditman – a 25-year Audit Partner at PwC –, could not have testified as he did. Nor can the PwC Guide, again whatever Mr. Oligschlaeger claims it means, turn ASC 980-605-25 into an accounting standard that magically only applies if there is a traditional regulatory asset with a deferral to a later rate case involved, any more than can the mere receipt of cash allow revenue recognition when the cash being received is merely based on an estimate and has not yet been finally earned. Indeed, the phrase "regulatory asset" doesn't appear anywhere in ASC 980-605-25 and, as noted earlier, whether a regulatory asset (of whatever nature) is involved, or not, is irrelevant to the application of ASC 980-605-25. What matters is that there are alternative revenues to compensate a utility for demand-side programs, as there are here. Nothing in Mr. Ditman's testimony limits his concerns about what Staff was then proposing to traditional regulatory assets (or regulatory assets of any kind) that create deferrals to a later rate case.

4. The substantial and competent evidence of record overwhelmingly shows that ASC 980-605-25 controls, and that it cannot be met using the Staff's TD Mechanism.

Mr. Oligschlaeger admits that Ms. Barnes and Mr. Hoffman are fully qualified to express the opinions they have expressed. Staff offered Mr. Ditman's testimony. Staff agrees that PwC is the final arbiter of when these revenues can be recognized.[56] Ms. Barnes has relied, as she was entitled to do, on PwC's position on the recognition (or inability to recognize) the revenues under the Staff's TD Mechanism, and has relied, as she was also entitled to do, on the opinions of the

[55] Ex. 101, Sch. LMB-2, (Barnes Surrebuttal, subsection 25-2).

[56] Mr. Oligschlaeger concedes that, at the end of the day, the only opinion that matters is PwC's opinion.

guidance given her by three of the Big Four national public accounting firms, with those three providing audit services to 90% of the public utilities in this country, all of which agree that ASC 980-605-25 is *the* controlling standard (regardless of whether an estimated amount of cash is provided), and that under that standard, after-the-fact application of EM&V prevents revenue recognition—period.[57]

Mr. Oligschlaeger is undoubtedly a well-qualified and experienced public utility commission auditor. When it comes to regulatory accounting, which is not the same as accounting under GAAP, he has substantial knowledge and experience. As his own testimony points out, however, traditional regulation and ratemaking don't always comport with GAAP. As he also agrees, demand-side programs, and MEEIA, are unique. They are, indeed, a clear exception to traditional cost-of-service regulation since by definition, the utility is knowingly reducing its own sales and relinquishing rate base investment opportunities. If the Commission wants to obtain information on traditional regulation and ratemaking, the Company will stipulate that Mr. Oligschlaeger is highly knowledgeable and well-qualified. That is not to say that the Company always agree with the policy suggestions Mr. Oligschlaeger may make based upon his understanding of traditional regulation (although sometimes it does), but the Company doesn't question his qualifications to opine about those policies.

The same simply cannot be said about Mr. Oligschlaeger's "judgment" about what GAAP allows or requires here. Mr. Oligschlaeger has no experience whatsoever in applying GAAP to the preparation of financial statements required by the SEC, or for that matter, to the preparation of such financial statements at all. Moreover, he does not question the credentials or experience of Ms. Barnes and Mr. Hoffman, who the record shows have such experience and

[57] Tr. p. 494, l. 8-23 to p. 525, l. 13-18.

indeed do have to apply GAAP to utility financial statements.[58] Mr. Oligschlaeger admits that the only GAAP that is specific to demand-side programs is ASC 980-605-25; he admits that specific guidance must be applied over general guidance.[59]

He also admits that his judgment about what GAAP allows (that merely providing cash will allow revenue recognition) reflects a more liberal approach to revenue recognition than do the opinions of the public utility accountants who must actually affix their signatures to the sworn financial statements and to audit letters required by the SEC that certify their compliance with GAAP.[60] This is another remarkable (and ironic) aspect of the Staff's position, particularly when one recognizes that Mr. Oligschlaeger concedes that the SEC and the Financial Accounting Standards Board (which issues GAAP standards) have imposed tougher (less liberal) standards on revenue recognition in recent years.[61] Yet Mr. Oligschlaeger is telling the Commission that all it must do is provisionally provide an estimated amount of cash, and all will be well; Ameren Missouri can recognize the revenues. Given that public utilities use accrual accounting, this simply makes no sense.[62]

There is significant reason to believe that the Staff itself realizes that its theories about revenue recognition are just that, theories. In addition to the clear and specific terms of ASC 980-605-25 discussed above, and the clear rebuttal of the Staff's attempts to avoid its application, another reason to question the Staff's theory is found in the fact that throughout this case, the Staff has maintained a "fallback" position. That fallback position is to argue that even

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[58] *Id.,* p. 866, l. 6-14.
[59] Tr. p. 869, l. 3-16, l. 25 to p. 870, l. 9.
[60] Tr. p. 872, l. 17-22.
[61] Tr. p. 871, l. 3-23.
[62] While a decision on the applicable accounting may not exactly be a decision on what the law is, a principle enunciated in *State ex rel. Valley Sewage Co. v. Public Service Com.*, 515 S.W.2d 845, 851 (Mo. Ct. App. 1974), is nevertheless apt, particularly given that the law (the SEC) requires that GAAP be followed as a matter of law: "Basically, good law is common sense. If it is not common sense, it is not good law." It's not good accounting, either.

if the Staff is wrong; even if the Company's earnings will suffer because the revenues cannot be recognized, the Commission nonetheless ought to reject the Company's TD-NSB mechanism. The Staff's rationale: it's "normal" to retrospectively true-up items and it's fair for the Company to be at risk because in other ratemaking contexts utilities may not be made whole. The Staff argues in its initial brief that its position is "in no way unreasonable."[63] Respectfully, the Staff is mistaken.

As earlier noted, energy efficiency is unlike anything else a public utility does. Mr. Oligschlaeger (understandably) could point the Commission to nothing else in the utility business where the utility knowingly takes steps to reduce its sales.[64] The Staff admits that the MEEIA statute is unique.[65] The Staff admits that there is no other statute in Missouri that affirmatively requires the Commission to align utility incentives with helping customers use energy more efficiently.[66] In his pre-filed testimony, Mr. Oligschlaeger tried to analogize a retrospective true-up to operation of the purchased gas adjustment clause, but admits that there is no statute similar to MEEIA that pertains to the PGA.[67] And Staff readily concedes that if the Company's earnings are being harmed because it is inducing customers to buy less of its product, it has a disincentive to pursue energy efficiency. How then, can it be "reasonable" to knowingly

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[63] Staff's Initial Brief, p. 22. While in the traditional regulatory setting, the Commission can in effect impose regulatory lag when it comes to expenses or capital investments. It *must* remove the throughput disincentive under MEEIA.
[64] Tr. p. 855, l. 6-11.
[65] *Id.*, p. 873, l. 1-4.
[66] *Id.*, p. 873, l. 6-11.
[67] *Id.*, pp. 873-74. Mr. Oligschlaeger's attempted PGA analogy is flawed in any event. Gas costs are simply a pass-through in the PGA and there must be a true-up to account for differences in forecasted volumes burned versus actual volumes; a true-up that is vastly different than utilizing a subjective after-the-fact study of the impacts of demand-side programs (i.e., EM&V) and replacing an earlier estimate with a new one. Unlike energy efficiency, natural gas transportation and consumption is directly metered and billed; it involves no hindsight subjective estimation of consumption.

harm the utility's earnings through a mechanism like the Staff's TD Mechanism that precludes revenue recognition? It can't, as explained by Ms. Barnes:

> **Q. And why does -- why does not being able to recognize that one-third of revenue fail to remove the throughput disincentive that I think everybody in the room -- we might not agree on everything, but everybody in the room would agree exists when you ask your customers to use less of your product?**
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> A. Well, because, again, I end up experiencing negative earnings because when I can actually record that revenue is in a different and a subsequent period than when I actually experienced the losses. And my shareholders are looking at my earnings numbers and saying why are you incenting people to use less of your product? That makes no sense. And if you're not being compensated or if there's no incentive given to us to do that, then why are we doing that?[68]

The General Assembly fully recognized that no rational utility would "do that" and that no one should be able to force a utility to do so, hence the permissive nature of MEEIA. That's why the Commission must align incentives, and that's why a means to address the throughput disincentive – no matter how "reasonable" Staff argues it may be in other non-energy efficiency contexts with which the Staff has experience – simply cannot be structured, as the Staff's TD Mechanism is, to cut utility earnings below the level they would have been had the utility not pursued demand-side programs at all.

G. The Company has more than carried its burden of proof.

Finally, the Staff claims that expert testimony from one certified public accountant with nearly 20 years of real application of GAAP for a public utility (Ms. Barnes), another with 33 years of such real-world experience (Mr. Hoffman), and another with 35 years of such experience (Mr. Ditman), together with the application of ASC 980-605-25 by three of the Big Four national public accounting firms who combined provide audit services to 90% of the public

[68] Tr. p. 528, l. 23 to p. 529, l. 13.

utilities in the United States, is insufficient proof of when throughput disincentive-related revenue can, or cannot, be recognized. The Staff's claim is as bold as it is wrong.

First, we have demonstrated above that ASC 980-605-25, by its express terms, applies, and that Staff's belated attempt to extricate its mechanism from its application simply makes no sense. Second, the Company has provided a tremendous amount of substantial and competent evidence to support is application of the applicable GAAP standards. The Company provided sworn testimony more than three years ago that ASC 980-605-25 controlled revenue recognition for demand-side programs. The Company filed this MEEIA case four months before the Staff filed rebuttal testimony, and nearly seven months before the Staff filed its last piece of testimony in this case. The Company answered a data request in this case involving another utility's application of ASC 980-605-25, as it is being applied by the Company, to a throughput disincentive mechanism arising from demand-side programs.[69]

It is not, and was not, incumbent on the Company to conduct research across the 50 states to somehow prove the absence of controversy over accounting for demand-side programs that may or may not be in place for dozens and dozens of other public utilities operating in this country. It is not, and was not, incumbent on the Company to figure out the nuances of each unique statutory scheme that applies in those states, the size of any demand-side programs other utilities may (or may not) operate, the details of the rate mechanisms they may have, the materiality of any throughput disincentive that might apply (if they have programs), whether compromises may have been made via rate case or other settlements that result in treatment of the throughput disincentive that might preclude full revenue recognition, etc. Staff has had more

[69] It is true that the data request response is not of record. This is because Mr. Oligschlaeger failed to express his novel "judgment" until redirect when, as noted, there was no opportunity to respond. It is for that reason we mention it here.

than three years to satisfy itself – or not – of the validity of the opinions of the Company and its independent auditor about the application of ASC 980-605-25. Not once, in any of the testimonies the Staff has filed, did the Staff provide any evidence that there has been any controversy about the accounting for demand-side programs in another case before a United States public utility commission. Indeed, Mr. Oligschlaeger testified in deposition more than three years ago that he planned to research the applicable standards further,[70] but then, apparently, he failed to do so, now criticizing the Company for a claimed (and false) failure of proof. The Company not only made a prima facie case in this case and in its MEEIA Cycle 1 case, but it went far beyond doing so.

That Staff wants a different record is, to put in bluntly, the Staff's problem. On this record, the Company has more than carried its burden of proof.[71]

III. UNSUBSTANTIATED ALLEGATIONS OF OVER-EARNING

Much has been made by some parties to this case that the mechanism approved as part of Ameren Missouri's first MEEIA cycle has resulted in "over recovery" or otherwise is designed in a manner that is described as an unfair "guarantee."[72] These arguments, while full of inflammatory rhetoric, ignore the record in this case. In a perfect world, these would not be issues that the Commission would have to decide because it could be handled in another manner. Other parties have suggested decoupling would bring about such a situation. The fact is, however, that decoupling has not been proposed as an option for consideration in this case. No

[70] Ex. 101, p. 18, l. 25-27 (citing Oligschlaeger's deposition in File No. EO-2012-0142).

[71] Sierra Club witness Tim Woolf's answer to one question ("friendly cross-examination," since Sierra Club supports the Non-Utility Stipulation) also proves nothing. We know nothing about the programs in these unidentified states he vaguely referred to, and nothing about their demand-side related statutes or rules (if they have statutes or rules at all), among many other items that one would have to understand "prove" that Ameren Missouri and PwC and Deloitte & Touche and Ernst & Young are all wrong, while Mr. Oligschlaeger is "right."

[72] *See e.g.* Staff Initial Brief, p. 20-21; 27, OPC Initial Brief, p. 18, 22-23.

decoupling mechanism has been proposed, no implementation tariffs have been drafted. In this case, the Commission must balance the idea that somehow we collectively will have better information (which is really just a different estimation, not necessarily a better estimation) upon which to calculate the throughput disincentive against the knowledge that waiting for that additional information means that the statutory requirement to align utility interests with that of helping customers use energy more efficiently cannot be fulfilled. Ameren Missouri recognizes the issues involved and offers a proposal, as set forth in the June 30 Stipulation, which minimizes risk to customers while still achieving the statutory mandate.

Let's turn first to OPC's claims. The OPC brief points to Staff witness Rogers testimony and warns that Ameren Missouri collected more in the throughput disincentive than was actually experienced in the Company's first MEEIA cycle because the calculation was not updated for avoided cost changes or EM&V results.[73] This calculation, however, was only a partial recalculation and, because of that, is a potentially misleading restatement of the throughput disincentive incurred by Ameren Missouri as part of its first MEEIA cycle.

For all the reasons explained in Section II. A. of this Brief, recalculating the throughput disincentive in the manner proposed by the Non-Utility Stipulation would result in Ameren Missouri being unable to recognize revenue in the same year as it would be experiencing losses from its MEEIA programs. This factor alone means the statutory requirements aren't achieved and makes the Non-Utility Stipulation unworkable. But even if it were possible to update without impacting the required balancing of interests, no one has demonstrated that updating provides a benefit, other than it being a new estimate.

[73] OPC Initial Brief, p. 22.

The values in the TRM are based upon EM&V and were agreed upon by the parties to the Company's first MEEIA case. The values were reviewed by DE's outside expert and according to the Stipulation this Commission approved, were to be used for MEEIA cycle 1. Substituting one estimate with another estime does not automatically provide for additional accuracy; it is still an estimation. We are attempting to measure something that did not occur, energy which was not used. And the values Ameren Missouri has proposed to use for its TRM for its second MEEIA cycle are valid. Mr. Rogers agreed that the values in the proposed TRM are reasonable and based upon full EM&V.[74] Staff did not propose any modifications to the proposed TRM,[75] in fact no party to this case has proposed to change the TRM in any manner. As further testament to the reasonableness of the TRM values, as the record in this case demonstrates, updating for the EM&V results doesn't significantly change the throughput disincentive calculation results. On cross-examination, Mr. Rogers calculated that difference to be approximately $1.6 million as compared to a total of $48,704,686, a difference of only approximately 370.[76]

The avoided cost estimate update, on the other hand, would cause a large difference and appears to be the heart of Staff's concern in this case. Again, however, the record is void of any demonstration of how updating the throughput disincentive in this manner is an improvement. When recalculating the throughput disincentive for 2013 and 2014, Mr. Rogers did not recalculate avoided costs for 2013 and 2014; instead he took the avoided cost estimate for 2015 (looking forward) and used it in the 2013 and 2014 calculation.[77] The Staff and OPC reliance on this point is puzzling, as even Mr. Rogers described his avoided cost substitution multiple times

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[74] Tr. p. 754 l. 4-21.
[75] Tr. p. 754, l. 22-25.
[76] Tr. p. 768.
[77] Tr. p. 757, l. 21 to p. 758, l. 3.

as "unscientific" and admits it is based on assumptions.[78] Avoided costs – no matter what "version" is used - are nothing more than an estimate based upon a number of assumptions that will inevitably turn out to be different than what actually occurs. Estimates have value, but they are still estimates, as Mr. Rogers testified at hearing:

> **Q. All right. Well, let's talk about that a little bit. Okay? Would you agree that the avoided cost estimate is an attempt at a particular point in time to predict long-term future market conditions?**
>
> A. Yes.
>
> **Q. You agree that that avoided cost estimate looks forward 20 years or so?**
>
> A. It does.
>
> **Q. Would you agree that it includes assumptions about future natural gas prices?**
>
> A. Yes.
>
> **Q. And I presume you'd agree that those assumptions have to also go over that long-term 20-year period?**
>
> A. Yes.
>
> **Q. Would you agree it includes assumptions about the impact of future environmental regulations?**
>
> A. It does.
>
> **Q. Again, looking forward 20 or more years?**
>
> A. Yes.
>
> **Q. Okay. Do you agree that it includes assumptions about future market level load growth over that same 20-or-more-year period?**
>
> A. I believe in -- in the process of modeling those avoided costs, it does.

[78] Tr. p. 757, l. 3-9, l. 14-16 to p. 758, l. 2-4.

Q. Okay. So rather than to continue to list, let me just summarize by saying you'd agree there are many other factors that have to be predicted in order to come up with this avoided cost estimate? You agree with that?

A. What avoided cost estimate?

Q. The -- in order for Ameren Missouri – in order for an avoided cost estimate to be produced by the Company, there are a multitude of factors that have to be looked at and some assumptions have to be made in order to come up with a value?

A. It's true for any -- any calculation of avoided cost, which, in fact, is changing all the time.

Q. Because it's a prediction?

A. Yes.

Q. Over a very long period of time?

A. Yes.

Q. Okay. And you'd expect this avoided cost prediction to not be true ultimately. Right? Likely to have errors in it or things that -- let's not say errors. Things that don't come, predictions that don't come through?

A. Because the future is uncertain, it's almost a certainty that the avoided cost -- the actual avoided cost in the future will not be what is forecasted today.

Q. And that's because all of these factors are difficult, if not impossible, to accurately predict over a long period of time?

A. And they're always changing.

Q. Okay. So the assumptions for one of these factors is probably too low?

A. And others are probably too high.

Q. Okay. But Ameren Missouri had to come up with these assumptions in order to come up with an avoided cost estimate. Right?

A. Correct.[79]

Using updated avoided costs when making an initial decision to undertake certain programs makes sense and is exactly what Ameren Missouri proposes to do. But updating this input to the

[79] Tr. p. 758, l. 11 to p. 760, l. 23.

throughput calculation or performance incentive in the middle of the first MEEIA cycle creates a lottery that the utility will either win (if avoided costs go up) or lose (if avoided costs go down) based largely on factors that are completely outside the utility's control, particularly when we consider that a key driver of changes in avoided cost estimates are changes in national and international markets for gas, power and capacity. Shifting to that strategy does not reflect best practices – it cannot be the intent of the statute to reward or penalize the utility merely because avoided costs change. As Ameren Missouri witness Mr. Richard Voytas discussed with the (then) Chair at hearing:

> It becomes unimaginable. If avoided costs change every year, that's something this Company cannot manage, has no control over. It becomes impossible to compare a plan year to year. There's other factors that no longer -- you have any influence over that could make the plan either worthy or not worthy. So the best practice is to take your avoided cost assumptions at the beginning of your three-year plan and keep them constant. And I -- subject to check, I'm not aware of another jurisdiction in this nation that doesn't do it that way [holding avoided costs constant].[80]

Imagine if this suggestion were made about a supply-side resource that had been added to rate base, say three years ago. One would not argue to take that supply-side plant out of rate base three years after it is placed into rates, even if the avoided cost, which likely justified the plant's initial construction, decreased substantially.[81] Yet Staff, OPC and others seek to impose such a burden on energy efficiency.

Despite Staff's and OPC's desire to update inputs, their recalculations ignore a very large driver; that is, rate case timing. The throughput disincentive for the first MEEIA cycle was calculated assuming Ameren Missouri would file rate cases every 18 months.[82] Yet between its

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[80] Tr. p. 284, l. 22 to p. 285, l. 9.
[81] Tr. p. 293, l. 16-24.
[82] Ex. 106, p. 9, l. 9-13 (Wills Surrebuttal).

last two cases alone, there was a gap of 29 months.[83] Mr. Rogers acknowledges that staying out longer between rate case filings than what was presumed in the throughput disincentive calculation increases the throughput disincentive actually experienced by Ameren Missouri.[84] Yet Mr. Rogers' update did not account for this difference in inputs nor did he quantify the potential impact of that change.[85] In fact it is only in the surrebuttal testimony of Mr. Wills (adopted by Mr. Davis) where this issue is addressed. The difference in rate case timing alone means that Ameren Missouri is likely to be collecting less than the amount actually experienced from its first MEEIA cycle.[86] But that is the bargain that all signatories to the stipulation struck and bargain Ameren Missouri has kept.

Staff's argument to update the throughput disincentive calculation ignores the fact that the agreed-0upon sharing percentage for the net benefits was calculated to allow for the return of a set amount of money. It is merely expressed in terms of a percentage of net benefits. If we had used the updated avoided cost number in the calculation, it simply would have resulted in a higher sharing percentage. Which precisely why it makes no sense to update this calculation midway through MEEIA Cycle 1.

Despite the rhetoric and outrageous claims asserted by some of the parties in this case, there is no evidence that Ameren Missouri has collected more in throughput disincentive from its first MEEIA program than it actually experienced. The stipulation in the first MEEIA case was an attempt to balance the Company's financial interests with that of helping customers use energy more efficiently. The June 30 Stipulation signed by Ameren Missouri and others in this case continues and improves upon that bargain and moves closer on the continuum of updating

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[83] Tr. p. 754, l. 14-19.
[84] Tr. p. 754, l. 3 to p. 755, l. 4.
[85] Tr. p. 754, l. 23 to p. 755, l. 10.
[86] Ex. 106 p. 9, l. 23 to p. 10, l. 3 (Wills Surrebuttal, adopted by Mr. Davis), p. 9, l. 23 to p. 10, l. 3.

the throughput disincentive level (as discussed earlier, using a two-tiered calculation, initially set at a level that provides almost no risk to customers and then updated for rate case timing and outcomes) without violating the statutory requirement to align utility interests with that of helping customers use energy more efficiently. This is not a trade-off that can be found in the Non-Utility Stipulation. The Non-Utility Stipulation provides no balance between the utility and its customers and, in failing to do so, makes no attempt to fulfill the statutory requirements of MEEIA.

IV. PROGRAM SAVINGS AND THE POTENTIAL STUDY

A. Unsupported Criticism of the Savings Target.

OPC, Renew Missouri, and Sierra Club, parties to the Non-Utility Stipulation, criticize Ameren Missouri's modified plan savings goal as well as the potential study used by Ameren Missouri. As explained below those criticisms are unfounded, inconsistent and unsupported. Ameren Missouri's energy savings goal (as modified by the June 30 Stipulation) is based on empirical data and analysis, and should be approved.

Ameren Missouri hired Enernoc (now AEG) to conduct a potential study and, in doing so, made substantial efforts to allow for stakeholder review and comment.[87] Once completed, that study was used as the starting point for the program design and savings goals in the Company's initial filing and also was used in the Company's Integrated Resource Planning ("IRP") process.[88] The potential study identified two key conceptual savings estimates: the Maximum Achievable Potential ("MAP") and the Realistic Achievable Potential ("RAP").[89] The original filing established a goal based on RAP savings. Under the June 30 Stipulation, the

[87] Ex. 112, p. 22 (Voytas Surrebuttal).
[88] *See* Ex. 104, p. 2-6 (Berk Surrebuttal).
[89] Ex. 111, p. 3-5 (Rohmund Surrebuttal).

Company's goal falls between MAP and RAP.[90] The Company uses RAP because it is important for resource planning purposes (and common sense) to ensure the Company is not premising its plan on an over-estimation of the potential for the adoption of energy efficiency. As Mr. Voytas testified, it is important for realistic levels of energy savings to be used for planning purposes in order to maintain the "…balance necessary to keep electric rates affordable for all customers."[91]

Estimating potential is an important part of incorporating a sound energy efficiency plan as a resource to meet prospective customer demand. During cross-examination, Mr. Woolf commented on his understanding of the consequences for over-estimating potential, as follows:

> **Q. And energy efficiency is considered a resource among other options to meet demand; is that right?**
>
> A. It is. But as I say in my testimony, it's only considered in a very limited way.
>
> **Q. Okay. Now, for energy efficiency, unlike a gas turbine, for example, or a gas-fired generator, energy efficiency is not dispatchable. Would you agree?**
>
> A. Correct. Demand response could be considered dispatchable. Energy efficiency, typically not.
>
> **Q. What does dispatchable mean to you?**
>
> A. It means that it can be called upon in short notice to contribute to the resource need, customers need it and, you know, for the system.
>
> ***
>
> **Q. Do you agree that with respect to the construction of natural gas, coal-fired, wind units, nuclear plant, generation facilities of that kind, there's a lead time for that construction required?**
>
> A. Yes.
>
> **Q. How long does it take, for example, to construct a gas generating unit, do you know?**

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[90] With respect to the IRP process, the Company continues to assume RAP for long-term resource adequacy planning purposes. *See* June 30 Stipulation, p. 2.
[91] Ex. 111, p. 7 (Voytas Surrebuttal).

A. Well, it depends on whether you include siding [sic] and all the rest, but it's on the order of three to four years and depends upon the unit.

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Q. To the extent there's a goal set for energy efficiency, it's overly ambitious and the company does not meet it, it still has to make up for that shortfall. Wouldn't you agree?

A. That's a hypothetical that is unlikely to happen, but if it does, yes, the utility has to make up for it. Maybe they can make up through it through short-term measures like off-system purchases or whatever.[92]

Having to take "short-term measures….or whatever" to address discrepancy in long-term planning (a problem that could take 3-4 years to resolve) is not a contingency Ameren Missouri is willing to accept. Such actions impact Ameren Missouri and its customers, and realistic and pragmatic planning is indeed important. As Mr. Woolf agreed at hearing, Ameren Missouri is responsible for providing service 24 hours a day, 7 days a week.[93] Ameren Missouri is very much in favor of relying upon energy efficiency within its mix of resources, but must do so in accordance with a reasoned view of potential energy savings over the long term. Other consequences for unsupported savings targets exist as well. As Mr. Voytas points out, overly ambitious but unsupported goals have resulted in the re-evaluation of energy efficiency policies in other jurisdictions.[94]

While OPC and others may allege the Company has underestimated savings for nefarious purposes, the truth is that the Company made a resource planning decision based on a valid potential study that estimated the realistic potential for energy efficiency from 2015-2018. The Company relied upon a third party with the requisite expertise to conduct this study. The two

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[92] Tr. p. 455 to p. 459.
[93] Tr. p. 457, l. 7-10.
[94] Ex. 112, pp. 4-7 (Voytas Surrebuttal). Mr. Voytas testified that many jurisdictions are re-evaluating (which is costly) energy efficiency program goals in order to look at actual measured potential. In some cases, states have frozen program goals.

primary parties claiming deficient savings include Sierra Club and OPC – both signatories to the Non-Utility Stipulation. Renew Missouri chimes in supporting these parties, but the positions of Renew Missouri are not informed by any testimony submitted by that group. With respect to savings generally, Staff offers a viewpoint almost 180 degrees from its co-signatories, raising skeptical and existential concerns about the value of energy efficiency to customers given current perspectives on low, estimated avoided costs. No party offers an alternative potential study or makes any specific adjustments to the study offered by Ameren Missouri.

As the record makes clear, neither OPC nor Sierra Club has come forth with *any* data specific to Ameren Missouri or any other empirical data to show any increment of additional savings opportunities available. Renew Missouri offers no evidence whatsoever, but rather offers conclusory arguments. There is absolutely no evidence in the record in this case, other than that produced by Ameren Missouri, upon which the Commission can rely to establish a savings goal. In addition, no party other than Ameren Missouri speaks to the budget that would be necessary to achieve savings. In fact, the parties don't ask that the Commission even set a goal pursuant to the terms of the Non-Utility Stipulation.

First, it seems entirely logical and appropriate that an energy efficiency program should have a goal before it starts. Additionally, for something as specific as a three-year achievable savings target, something more than conclusory statements or affirmations are needed, and a specific goal should be supported by at least some measure of empirical data. The parties opposed to the June 30 Stipulation offer only generalized claims concerning savings available. By way of example, the witness for Sierra Club makes the following suggestion: "…another example is statewide marketing and outreach programs that can significantly increase customer awareness and adoption of efficiency measures…", yet Mr. Woolf does not offer a program

example or outline, explain how this might work, or give any other specifics.[95] Given that utility-sponsored energy efficiency programs by necessity involve customer marketing and outreach, Mr. Woolf does not offer any specifics as to what to change, how much it will cost, and how much additional savings can be obtained.[96] Simply saying that there are more savings out there is not enough – there must be some factual basis for these assertions.

Setting the target for energy efficiency savings based upon conjecture that there must be higher savings somewhere would be arbitrary. Moreover, for the purpose of the standards to which the Commission is held, it would be unreasonable as a matter of law for the Commission to approve a program or set a goal without factual support.[97]

It is noteworthy that the Non-Utility Stipulation signatories are not united in their perspectives concerning savings goals or potential savings that are economically feasible to obtain. Each of the signatories has a different position, to the extent that the parties are *clearly adverse to one another*. In fact, Sierra Club devoted a section in its brief to address Staff's claims concerning the fundamental cost-effective value of energy efficiency as a resource.[98] In its Initial Brief, Staff argued that low estimated avoided costs, which are based on forward energy prices, produce low benefits for energy efficiency.[99] As Ameren Missouri noted in its original filing, the goal for 2016-18 is noticeably lower than the 2013-15 portfolio due to increasing federal lighting standards and lower avoided costs. OPC advocates against the

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[95] Ex. 1200, p. 25 (Woolf Rebuttal).
[96] Mr. Woolf does offer some rough estimations of additional program savings over the original Plan on pages 40-41 of his Rebuttal Testimony, but the citation merely references his firm's website and offers no record evidence. In any event, Mr. Woolf stated that he believes the increase could be "as high as" 18% higher than the original plan. After Mr. Woolf filed his testimony, the Company agreed to a 37% increase in savings as part of the June 30 Stipulation. Nonetheless, Sierra Club still holds out for more savings.
[97] Union Electric Co. vs. Public Service Com'n, 136 S.W.3d 146, 151 (Mo. App., W. D. 2007)
[98] Sierra Club Initial Brief, p. 13. Sierra Club's Initial Brief dedicates only 5-6 pages to criticizing the Company's evidence or position. The remainder is oriented at Staff's positions regarding rate impacts, the use of a "Delphi panel," and the merits of decoupling.
[99] Staff Initial Brief, p. 12.

inclusion of a supplemental CFL residential lighting programs in MEEIA Cycle 2 because of the achieved savings in MEEIA Cycle 1.[100] With respect to lighting, note the contrast between OPC's position with that of Sierra Club, a party that believes there are substantial lighting savings remaining.[101] In another example of internal inconsistency, MIEC (also a party to the Non-Utility Stipulation) argues at length that the Commission should approve a plan based on RAP. Conversely Sierra club believes that MAP is preferable to a realistic measure.[102]

Simply put, these parties cannot reconcile amongst themselves what they believe the goal of MEEIA should be, and hence cannot articulate a coherent position upon which the Commission can make an informed judgment. Further, the "Delphi[103] Panel" concept advocated by the Non-utility stakeholders– which would define a savings goal *after* the approval of the plan - is flawed for many reasons discussed in Section VI.(E) of this Reply Brief.[104] Further, given the polarity of opinions within the very group of people that support such a concept – it appears this undefined and belated process would be unlikely to lead to anything aside from further disagreement and acrimonious litigation. Eight months of discussions, supported by experts from various parties in this case, did not lead to a unanimous savings goal. There is no reason to believe this Delphi Panel would either.

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[100] OPC Initial Brief, pp. 1-2.
[101] Ex. 1200, pp. 16-17 (Woolf Rebuttal).
[102] Sierra Club Initial Brief, p. 11.
[103] The terms "expert panel" and "Delphi Panel" are used interchangeably by the signatories to the Non-Utility Stipulation. The world Delphi is a reference to a location in Greece where the ancient Greeks would consult the "Oracle" (a person or entity regarding what they should do in matters of importance), as this person or entity was said to utter prognostications on behalf of the gods. In this case, the Oracle would be a panel of paid consultants from the east and west coast. *See* Sierra Club Initial Brief; p. 12; *See also* Tr. p. 435 to p. 436 (Cross of Woolf).
[104] See Section VI.E, "Stakeholder Collaborative vs. Delphi Panel," *infra*.

Setting aside the inconsistencies of the Non-Utility Stipulation signatories, Sierra Club, OPC, and Renew Missouri offer three primary criticisms of the Company's potential study and savings targets:

- The use of a YouGov study to develop the Realistic Achievable Potential relied upon in the IRP preferred plan;
- Comparison's to the Company's MEEIA Cycle 1 filing; and
- MAP rather than RAP should be used to establish savings goals.

Other criticisms existed in the underlying case but were scarcely mentioned at hearing or in the post-hearing briefs. This is in part because both competing Stipulations address additional programs and a collaborative to explore new savings opportunities (which would indicate this is a sufficient way to address this issue), thus mooting those concerns at least in terms of contested issues. Sierra Club argued extensively that the Company has undervalued the usefulness of energy efficiency given its predictions concerning the adoption of the Environmental Protection Agency's ("EPA") Clean Power Plan ("CPP"). Given that the EPA's Final CPP rulemaking removes energy efficiency as a compliance alternative (at least directly) to the rules' GHG provisions, Sierra Club's original position is of significantly diminished relevance.[105] The three surviving criticism (noted in the bulleted list) are addressed in detail below.

[105] Ex. 1200, pp. 36-40 (Woolf Rebuttal). *See* also Sierra Club Initial Brief, p. 14 (Confirming the irrelevance of energy efficiency as a compliance option under the CPP is Sierra Club's lack of argument concerning the importance of CPP compliance in its briefing position, which is a stark departure from the position it advocated during the testimonial phase of the case when the CPP Final Rule was pending.); See also See 40 CFR Part 60 (Energy Efficiency is not a "building block" for the purposes of final CPP compliance. Energy efficiency will still remain a relevant means or reducing load and thus emissions, but the manner in which energy efficiency can be utilized as a compliance alternative has significantly changed).

B. OPC's Criticism of YouGov Data.

OPC argues that the Ameren Missouri improperly used data from YouGov, a third-party source, as part of its potential study to estimate how much savings can feasibly be achieved.[106]

Estimation of achievable energy efficiency savings is based upon market research and survey results.[107] As Ms. Rohmund explained, a well-known problem exists in the fact that people tend to overstate their good intentions.[108] The YouGov data was employed to estimate the number of customers that would actually follow through with their statement they would make an energy efficient choice. Obviously, customers have a choice whether or not to participate and the role of the Company is to incentivize that choice but Ameren Missouri cannot control consumer behavior. In this sense, customer participation rates or "take rates" are important to estimating potential. The use of YouGov data was important in developing participation assumptions in order to develop a *realistic* achievable potential estimate. Ameren Missouri, however, didn't only offer what was realistically achievable, it provided other perspectives on higher potential and higher participation levels. As Ms. Rohmund explained, the study also identified a maximum achievable potential, and in doing so assumed all customers were within the segment of customer behavior (practical idealist) to adopt energy efficient measures.[109] Thus, Ameren Missouri set forth a range from the realistic to the idealistic in terms of achievable potential. Rather than obscuring data through the use of statistical methodologies, Ameren Missouri has been transparent.

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[106] OPC Initial Brief, p. 6.
[107] Tr. p. 177 (Rohmund Cross).
[108] Id.
[109] Id, p. 174.

Additionally, Ms. Rohmund indicated at hearing that the YouGov study data was used in other jurisdictions and studies.[110] OPC in contrast cannot identify any recognized or superior approach to addressing the well-known problem of survey participants overstating good intention in their answers. OPC offers criticisms, but no alternatives. With respect to the inferences OPC suggests concerning savings estimates, it makes the unsubstantiated allegation that in the potential study's "…savings targets for MEEIA Cycle 2 are artificially low."[111] If that were the case, then the savings estimated by Ameren Missouri could be expected to be substantially lower than what has been identified in other similar studies. However, the record shows that Ameren Missouri assumes relatively high customer participation rates (by program category) when compared to similar studies that included Ameren Illinois, BG&E, and Omaha Public Power District.[112] Ms. Rohmund also testified that when compared to dozen recent studies referenced by the EPA's CPP, Ameren Missouri's achievable "savings-weighted participation" ratios are consistent with those other studies.[113]

While it's easy to make an allegation, it is much harder to substantiate one. A potential study is a substantial statistical undertaking. Ameren Missouri cannot simply ask customers what they may or may not do in the future with respect to making energy efficient choices, and rely upon the answer as an absolute commitment. Further, as Mr. Voytas points out, the entire potential study process was vetted extensively before stakeholders, including OPC.[114] Enernoc spent considerable time attempting to address stakeholder concerns, in fact 60% of the

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[110] Id., p. 180, l 9-16.
[111] OPC Initial Brief, p. 27.
[112] Ex. 111, po. 20-21 (Rohmund Surrebuttal).
[113] Id, p. 24.
[114] Ex. 112, p. 22 (Voytas Surrebuttal).

company's billable hours were devoted to stakeholder processes.[115] There were at least 70 stakeholder interactions concerning the potential study.[116] OPC (and every other stakeholder) had ample opportunity to offer alternative or supplemental approaches to the statistical methodologies used in the potential study, but did not do so. Accordingly, OPC has failed to substantiate its belated criticism of *the only* estimation of program potential in this case, and further, the record establishes that the potential study relied upon by Ameren Missouri was methodologically sound. Mr. Woolf also fails to explain where he (or his client) were during the development of the Ameren Missouri Potential Study. It's a disservice the process to wait until well after the study has been completed to offer generalized process and methodological criticisms to the potential study. Renew Missouri has no expertise (or at least none that has been offered) when it comes to the technical aspects of a potential study, and thus their conjecture today about what the potential study should or should not show is just that, conjecture.

C. Comparisons to MEEIA Cycle 1.

In its initial filing, Ameren Missouri recognized that its savings estimates were lower than those identified in the MEEIA Cycle 1 filing. As the Company explained, there were three primary reasons: (1) federal efficiency standards, (2) 2013 EM&V measure level savings estimates; and (3) lower avoided cost estimates. OPC, Sierra Club, and Renew Missouri[117] criticize the Company for its lower savings estimates in this case[118], yet the record is completely devoid of those parties offering substantive evidence based upon actual data or facts that would

[115] Id.
[116] Id., p. 23.
[117] In fact, Renew Missouri cites NRDC witness Mr. Phil Mosenthal's testimony critical of the Company's original proposal to have a target that adjusts annually based on EM&V results and updated TRM values. The Company mooted this concern by establishing a fixed target and NRDC supports the June 30 Stipulation. While Renew Missouri may not agree with the June 30 Stipulation, it cannot ignore it. The Company has agreed to a fixed goal that is 37% higher than its original filed position.
[118] See e.g. Renew Missouri Initial Brief, p. 9; Sierra Club Initial Brief, p. 11, and OPC Initial Brief, p. 5.

address why any of the three factors are not reflective of real, present conditions that indeed lower the savings potential at this time. OPC even argues that additional lighting programs should not be added to Ameren Missouri's plan because the Company has completed a wholesale transformation of the residential lighting market in eastern Missouri.[119]

Indicative of the unsupported nature of the claim, consider Sierra Club's argument in its Initial Brief: "…what the Company actually proposes is a 25% decrease in planned savings as compared to Cycle 1." While Sierra Club can use a calculator correctly, referencing this number does nothing to advance the development of additional savings. Looking at Mr. Woolf's testimony, here are is his recommendations on behalf of Sierra Club: (1) maintain programs that are proposed to be terminated; (2) add programs, (3) modify existing programs to increase savings, and (4) expand programs to increase savings.[120] But this is as far as Mr. Woolf and Sierra Club venture out on the limb; no explanation is offered as to how any of these generalized recommendations could be implemented, how much they may cost, nor are any specifics offered as to how to overcome the three limiting factors the Company actually faced in developing its plan.

Mr. Woolf offers no explanation of how such actions would be within some reasonable measure of cost-effective resource planning. Taken together, Sierra Club's Initial Brief and the testimony filed on its behalf offers page upon page of inference, and nonspecific criticism—there are *no actionable recommendations or meaningful discourse offered* to address the central issues to be resolved in this case. As another example, Sierra Club explains that despite federally mandated lighting standards "….opportunities remain, even in the lighting sector…"[121], yet they

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[119] OPC Initial Brief, p. 12.
[120] Ex. 1200, p. 52 (Woolf Rebuttal)
[121] Id., p. 16.

offer no explanation of what opportunities exist, their associated cost, or how much saving can be obtained. Sierra Club offers no facts or informed testimony of the impact of the distribution of CFL and light–emitting diode ("LED") bulbs under Ameren Missouri's MEEIA Cycle 1 program. Whether Sierra Club wants to admit it or not, many of these bulbs are already in Ameren Missouri customers' sockets today, with increasing penetration into the consumer market. Sierra Club appears to make an attempt to instruct the Commission as to how to value energy efficiency relative to current prevailing avoided costs, but offers only a bare argument that rate impacts are not that important and the way to solve them is through increased participation.[122] While there may be savings remaining, there also must be a strategic decision made based upon a reasonable quantification of the already-installed bulbs. The frustration for Ameren Missouri is that Sierra Club can offer a valuable perspective concerning the environmental merits of energy efficiency programs, but they need to come to table with facts and specifics at some level. When it comes down to it, simply saying "not good enough" doesn't cut it – empirical evidence and facts must sustain the ultimate savings goal.

D. MAP vs. RAP.

Sierra Club argues that MAP should be used rather than RAP to set the MEEIA Cycle 2 savings target.[123] This is not a serious proposal. As noted above, we can't force our customers to sign up for energy efficiency programs, it is voluntary and the MAP potential is a representation of the theoretical ceiling of savings attainable – it assumes that every customer is a *practical idealist* when it comes to energy efficiency – the customer segment profile most likely to adopt energy efficiency.[124] On behalf of MIEC, Mr. Brubaker testified that: "MAP

[122] Sierra Club Initial Brief, p. 15.
[123] Sierra Club Initial Brief, p. 11.
[124] Tr. p. 174.

obviously places tremendous risk on customers for the potential of a benefit that may or may not materialize almost 20 years into the future. As Ameren Missouri explained on page 9 of Chapter 10, the MAP portfolio would cost roughly twice as much as the RAP portfolio in the years 2016 through 2018."[125] With respect to this statement, we agree with Mr. Brubaker – RAP, not MAP, is the appropriate foundation for an energy efficiency program.

E. Ameren Missouri's savings targets, as modified by the June 30 Stipulation, are well supported and should be approved.

Given that the signatories to the Non-Utility Stipulation seem to balk at the savings targets, one would expect examination of their briefs and positions would support higher savings, yet the Initial Briefs of two of the signatories (OPC and Staff) actually substantiate the observations made by the Company in the initial filing – that federal standards decrease lighting potential, MEEIA Cycle 1 lighting success, and lower avoided costs estimates have reduced the savings opportunities achievable in this next 3-year program cycle.

The reality is that Ameren Missouri's potential study is not a document that contains some absolute value as to attainable energy efficiency, it is a measurement of *potential.* There may well be things we have not looked at, and that is why the Company has in good faith agreed to a fast track collaborative process designed to look at *specific proposals* to go farther and find more savings to be added to the base case set forth by the June 30 Stipulation – which in and of itself contains additional programs, savings and a higher goal. Further, Ameren Missouri has shown that it will listen when presented with specific suggestions. NRDC cited a Potential Study concerning low-income savings with some data specific to Missouri, and NHT witness Anika Brink made specific proposals with respect to the low-income program.[126] Thus, evidence can

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[125] The quote is included in MIEC's Initial Brief, p. 3.
[126] Ex. 301, p. 34 (Mosenthal Rebuttal); Ex. 1300, p. 3-4 (Brink Rebuttal).

sustain the enhancements made by the June 30 Stipulation wherein Ameren Missouri agreed to substantially increase low-income multi-family programs (by almost double) from its initial proposal. Ameren Missouri looks forward to working with the parties to achieve higher levels of savings by looking at specific savings opportunities through a collaborative process.

V. DEMAND BASED PERFORMANCE INCENTIVE

Staff's Initial Brief describes the Non-Utility Stipulation as taking a three-pronged approach to performance incentives that allows Ameren Missouri to earn such incentives by accomplishing any or all of the following objectives: (1) reducing kilowatts through demand reductions during peak demand hours, (2) improving participation in the Multi Family Low-Income ("MFLI") program, and (3) increasing energy efficiency savings by reducing KWh usage.[127] That description is inaccurate for at least three reasons. First, the terms of the stipulation deny the Company any opportunity to earn a performance incentive for KWh reductions during 2016, and any incentive opportunities for 2017 and 2018 are contingent on the Commission's approval of energy efficiency targets to be recommended by the panel of experts described in paragraph 2.d of the stipulation. Second, the incentive related to the MFLI program is not a true "performance" incentive, unless the Commission believes requiring Ameren Missouri to expend 100 percent of the program's budget, regardless of how much energy efficiency is actually achieved, is an objective that should be encouraged and rewarded. Finally, as the discussion that follows shows, the stipulation's focus on kilowatt savings distorts MEEIA's purpose – to promote *all* cost-effective energy efficiency measures – and fails to provide an appropriate earnings opportunity that allows the Company to value demand side programs equal to supply side options.

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[127] Staff's Initial Brief, p. 5.

Ameren Missouri's witness Richard Voytas testified "[e]nergy efficiency, as the name implies and as defined in MEEIA, is about energy with ancillary demand reduction benefits,"[128] and even a cursory review of the MEEIA statute confirms his interpretation. The General Assembly intended for the statute to enable electric utilities to pursue energy efficiency programs that would help customers lower their monthly energy bills (through KWh savings) both now and in the future. For example, MEEIA defines "demand-side program" as "any program conducted by the utility *to modify the net consumption of electricity on the retail customer's side of the electric meter, including but not limited to energy efficiency measures*,"[129] and goes on to define "energy efficiency" as "measures that reduce the amount of electricity *required to achieve a given end use*" (emphasis added).[130] In addition, subsection 3 of the statute requires the Commission to "[e]nsure 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*,"[131] while subsection 12 obligates investor-owned electric utilities to submit annual reports regarding their energy efficiency activities that include "peak demand *and energy savings*" (emphasis added).[132] This language clearly shows the importance the General Assembly attached to measures that would allow customers to immediately reap the benefits of energy efficiency measures by reducing their short-term energy consumption. And while the statute mentions demand-related benefits, there can be no question MEEIA considers them to be ancillary to usage-related benefits. To conclude otherwise would require one to believe the General Assembly thought it was most important to focus on energy efficiency that could be

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[128] Ex. 113, p. 6, l. 20-21 (Voytas Rebuttal).
[129] §393.1075.2(3), RSMo.
[130] §393.1075.2(4), RSMo.
[131] §393.1075.3(2), RSMo.
[132] §393.1075.22, RSMo.

achieved during a handful of peak demand hours each year instead of during any of the 8,760 hours when KWh savings can be achieved. Performance incentives authorized by the Commission must be consistent with this legislative intent.

Further support for this interpretation of MEEIA is provided by the fact energy efficiency programs are designed to reduce energy consumption, not peak demand, and are evaluated to measure the magnitude of energy savings and not peak demand reductions.[133] In fact, EM&V contractors don't focus on measuring demand reductions; instead, demand reductions calculated as part of EM&V are based solely on a mathematical analysis of KWh savings.[134] In addition, demand reductions that can be achieved by certain energy efficiency measures may not be sustainable over the useful life of the measure.[135] So whatever demand savings estimate might be made for an energy efficiency measure in an individual year or over the three-year life of the MEEIA cycle may not accurately reflect kilowatt savings that will be achieved in the future and for which incentives will have been paid.

A portfolio of energy efficiency measures focused on kilowatt savings also will achieve fewer reductions in greenhouse gas emissions than one focused on KWh savings. This is true because generating units Ameren Missouri must dispatch to meet periods of peak demand are fueled by natural gas while coal-fired units provide most of the energy used to meet the Company's base load requirements. Gas-fired generators produce fewer greenhouse gases than coal-fired units, so reducing KWh at system peak will result in a lesser reduction in greenhouse gases than if those KWh are reduced during non-peak periods.[136]

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[133] Ex. 113, p. 9, l. 3-6 (Voytas Rebuttal).
[134] *Id.*, p. 7, l. 15-17.
[135] *Id.*, p. 8, l. 5-17.
[136] *Id.*, p. 11, l. 18 to p. 12, l. 15.

In addition to being inconsistent with the objectives of MEEIA, the kilowatt reduction-based performance incentive proposed in the Non-Utility Stipulation suffers from several specific defects. For one thing, it abandons the net shared benefits incentive model wherein both Ameren Missouri and its customers share in the benefits produced by the Company's energy efficiency programs.[137] Customers benefit most from energy efficiency measures that allow them to reduce KWh usage. Because a performance incentive focused on reducing kilowatts at peak demand relegates KWh usage reductions to, at best, a position of secondary importance, customers would receive fewer benefits from whatever incentives Ameren Missouri is able to earn for reducing peak demand. The Non-Utility Stipulation also provides no incentives for kilowatt reductions below 100 percent of target. Even assuming a demand-related focus is appropriate and can accurately be measured, this feature ignores the fact that kilowatt savings at less than 100 percent of target will produce future savings for customers and provides no earnings opportunity to the Company for producing those savings.[138]

The targets the stipulation sets for earning a performance incentive are also problematic. For one thing, in order to earn a performance incentive equal to 100 percent of the target specified in the June 30 Stipulation, the Non-Utility Stipulation would require Ameren Missouri to spend more than $750 million during MEEIA Cycle 2 on energy efficiency programs designed to reduce peak demand. And if the Company wanted to earn the top incentive available under the June 30 Stipulation – 130 percent of target – the required expenditure would increase to more than $1.2 billion.[139] Expenditures of this magnitude could never be considered cost-effective, which is the MEEIA standard for energy efficiency measures, which exposes the fact that the

[137] Ex. 107, p. 11, l. 13-14 (Davis Rebuttal).
[138] *Id.*, p. 12, l. 7-14.
[139] *Id.*, p. 13, l. 1-9.

design of the performance incentive in the Non-Utility Stipulation encourages Ameren Missouri to net benefits that may accrue to customers during Cycle 2.[140] In contrast, June 30 Stipulation, which provides both KWh and kilowatt savings opportunities, provides a total portfolio budget for MEEIA Cycle 2 of $197 million.[141]

Another flaw in the Non-Utility Stipulation is its linkage of the amount of the stipulation to the future closure of Ameren Missouri's Meramec Energy Center. Ameren Missouri witness William Davis testified that energy efficiency plays no role in determining when the Company will retire one of its generating units. Those decisions are based on the unit's age, its operating costs and how current or future environmental regulations are likely to impact those costs.[142] Accordingly, it was entirely inappropriate for the signatories to the Non-Utility Stipulation to have based their proposed Cycle 2 performance incentive on a generating facility whose closure was not caused or influenced by energy efficiency measures that have been implemented in the past or that will be implemented in the future. Compounding this flaw, is the failure to account for the cost of income taxes associated with any Commission approved performance incentive.[143]

As the preceding discussion makes clear, there are numerous reasons to reject the performance incentive proposed in the Non-Utility Stipulation. In addition to numerous structural flaws, by elevating possible future kilowatt savings over current KWh savings, the proposal is inconsistent with the terms of the MEEIA statute. In contrast, the performance incentive proposed in the June 30 Stipulation, which is modeled after the performance incentive the Commission approved for MEEIA Cycle 1, is consistent with MEEIA's objectives and is fair

[140] Ex. 113, p. 2, l. 6-8 (Voytas Rebuttal).
[141] June 30 Stipulation, p. 4, ¶7.
[142] Ex. 107, p. 15, l. 4-7 (Davis Rebuttal).
[143] Ex. 107, p. 18 to p. 19 (Davis Rebuttal).

to both the Company and its customers. Mr. Davis described the advantages of the June 30 Stipulation in his rebuttal testimony:

> Ameren Missouri's proposal has a distinct advantage because relying on net benefits provides a meaningful incentive to encourage the Company to implement programs in the most cost-effective manner. This is mutually beneficial to Ameren Missouri and its customers. As customers get more net benefits, the Company gains more earnings. In contrast . . . the Non-Utility Stipulation primarily incents the utility purely based on system coincident peak demand savings without consideration for the cost of achieving them. Structuring an incentive as the Non-Utility Stipulation allows the utility to chase a reward for itself while potentially reducing the reward to customers because what it costs to achieve the savings does not matter for purposes of determining the earnings opportunity. It is obvious that an inventive model such as sharing net benefits provides rewards in a win-win fashion and that such an incentive model properly aligns incentives between the utility and its customers. Ignoring the cost side of the equation does not produce the same customer protection.[144]

VI. THE MEEIA PORTFOLIO AND PROGRAM ISSUES

A. MFLI Program.

The June 30 Stipulation proposes to significantly expand and enhance the MFLI program for MEEIA Cycle 2. For example, the stipulation proposes to increase the MFLI budget approximately fifty-eight percent – to $10.75 million – to better enable Ameren Missouri to serve the energy efficiency needs of this vulnerable and hard-to-reach market segment.[145] In addition, the June 30 Stipulation proposes to: (1) create a single point of contact for owners of low-income, multi-family properties to ensure they and their tenants have ready access to benefits available under the Company's energy efficiency programs; (2) provide a twenty-five percent incentive bonus to property owners who install common area energy efficiency measures; and (3) make available Level 1 energy audits to low-income building owners to help

[144] *Id.*, p. 10, l. 15 – p. 11, l. 9.
[145] Ex. 110, p. 4, l. 21-23 (Laurent Supplemental).

them identify energy efficiency opportunities and provide information regarding costs and payback periods, with the objective of increasing overall program participation.[146]

Unlike other issues in this case, all parties largely agree to changes to the MFLI program proposed in the June 30 Stipulation. As Renew Missouri noted in its Initial Brief, the two stipulations under consideration in this case are alike in most respects, and the "consensus items were developed through productive negotiations and collaboration between many parties," including the National Housing Trust and the Tower Grove Neighborhoods Community Development Corporation, the two groups in this case that have focused on customers in multi-family affordable housing.[147] However, the Initial Briefs of both Renew Missouri and NHT/Tower Grove claim the stipulations differ in two respects. First, they claim customers in Ameren Missouri's 1(M) rate class are improperly excluded from MFLI benefits described in paragraph 8.e of the June 30 Stipulation.[148] Second, they claim the Level 1 energy audits specified in paragraph 8.f of the stipulation will not provide customers with information regarding estimated costs of energy efficiency measures identified in those audits.[149] But, as the discussion that follows shows, these criticisms of, or concerns about, the June 30 Stipulation are unfounded because they appear to be based on misunderstandings about the stipulation and how the Company's MFLI program will operate.

The MFLI program benefits described in paragraph 8.e of the June 30 Stipulation focus on the owners of multi-family low-income buildings and not their individual tenants. This is clear from the fact only building owners have the ability to install whole building energy efficiency measures such as air conditioning, hot water heating, building envelope improvements

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[146] *Id.*, p. 5, l. 5-15.
[147] Renew Missouri Initial Brief, p. 18.
[148] *Id.*
[149] *Id.*

and controls and pump/fan/piping/duct improvements. And only building owners can take advantage of the twenty-five percent bonus incentive the stipulation proposes for installing whole building and common area efficiency measures. Owners of multi-family, low-income properties receive electric service from Ameren Missouri under one of the following rate schedules: 2(M) General Service Rate, 3(M) Large General Service Rate, or 4(M) Primary Service Rate. The Company's 1(M) Residential Rate is not available to property owners; it is only available to individual tenants in multi-family, low-income buildings. Because individual tenants cannot authorize or implement the whole building or common area efficiency measures described in paragraph 8.e, it would serve no purpose to include, or even mention, the 1(M) rate class in that paragraph. Therefore, limiting the application of the measures and benefits described in paragraph 8.e of the June 30 Stipulation to the 2(M), 3(M), and 4(M) rate classifications is both logical and rational when the purpose of that paragraph is understood.

The hearing testimony of Tower Grove's witness Dana Gray is mistaken with respect to paragraph 8.e and why certain rate classes were specified in that paragraph. In response to a question about incentives provided in that paragraph, she expresses concern those incentives won't reach all multi-family, low-income properties.

> In the stipulations, they're labeled 2M, 3M, 4M, and I'm not familiar with what that means. I noted the difference in OPC and Staff Stipulation that they also included 1M. I am assuming that that is a smaller customer. And many of the multi-family properties in St. Louis are four-family properties and I'm under the assumption that those would be 1M customers of Ameren. So I would ask and hope that those properties would be included.[150]

As the discussion in the preceding paragraph demonstrates, Ms. Gray's concerns are unfounded. Because only individual tenants can receive service under the 1(M) Residential Rate, excluding that rate class does not prevent property *owners* from taking full advantage of the programs and

[150] Tr. p. 720, l. 21 to p. 721, l. 4.

benefits specified in paragraph 8.e. Her assumption the 1(M) rate applies to small multi-family properties, which appears to be the source of her concern, simply is incorrect.

The other concern expressed by Renew Missouri and NHT/Tower Grove – that the Level 1 energy audits described in paragraph 8.f of the June 30 Stipulation do not include cost estimates of recommended energy efficiency measures – fails to appreciate the fact that Ameren Missouri does not install energy efficiency measures. Because the Company relies on third-party trade allies for those installations, it would be impossible for Level 1 audit reports to accurately identify the cost of energy efficiency measures. Under paragraph 8.f, audit reports will include "a list of recommended measures that would provide savings for the building," "information on savings and typical payback range," and "information on available prescriptive and performance-based (e.g. business custom) incentives." But because Ameren Missouri cannot control the final installed cost of energy efficiency measures, those costs – or even estimates of those costs – cannot be included in the proposed Level 1 audit reports. Customers interested in installing energy efficiency measures can, and should, obtain those cost estimates from the third-party trade allies that will actually install the measures. It would be a disservice to both customers and contractors for Ameren Missouri to attempt have audit contractors price services which they have no direct knowledge of, and which they do not participate in bidding and installing. Information is a great thing, but if the information in the audit is not accurate, the customer may be misled about what is or is not economic in terms of improvements – the implementation vendors should be responsible for pricing information.

B. Compact Fluorescent Lighting.

Compared to MEEIA Cycle 1 programs, Ameren Missouri's original MEEIA Cycle 2 proposal significantly reduced projected MWh savings targets for the Company's residential lighting program. As shown in Exhibit 100 NP, the Cycle 2 energy savings target declined to

approximately 62,000 MWh from a Cycle 1 target of more than 280,000 MWh. Ameren Missouri witness Voytas explained the reasons for this reduction:

> The short answer is that federal lighting efficiency standards promulgated in EISA 2007 have set the baseline lighting efficiency standards at such a level that CFLs [compact fluorescent lights] are no longer cost effective. While CFLs may have been a significant source of savings in the past, this will no longer be the case going forward due to the important milestones embodied in the EISA law with respect to lighting.[151]

Because of Extended Industry Standard Architecture ("EISA") standards described by Mr. Voytas, LED light fixtures would replace CFLs as the focus of the Company's residential lighting program during Cycle 2.[152] But because LEDs are significantly more expensive than CFLs, there likely will be less of an opportunity in Cycle 2 to achieve significant energy savings by promoting energy efficient lighting, certainly much less than in Cycle 1.[153]

Another factor contributing to the reduced savings target was the Company's success in promoting CFLs during MEEIA Cycle 1, which greatly exceeded expectations and provided approximately eighty percent of achieved residential portfolio energy savings for program years 2013 and 2014.[154] By the conclusion of Cycle 1, Ameren Missouri estimates it will have sold enough energy efficient light bulbs to be in the 35-40 percent saturation rate for the average home in its service area.[155] And according to a 2012 EM&V impact report issued by Cadmus, saturation around thirty percent has historically been the maximum achievable for CFLs.[156]

Subsequent to the December 2014 filing of its original MEEIA Cycle 2 plan, at least two things caused the Company to reconsider its decision to eliminate CFLs from its residential energy efficiency portfolio for program years 2016-2018.

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[151] Ex. 112 NP, p. 109, l. 17-21 (Voytas Surrebuttal).
[152] Tr. p. 264, l. 3-4.
[153] *Id*, l. 21-25.
[154] *Id*.
[155] Ex. 112 NP, p. 107, l. 1-3 (Voytas Surrebuttal).
[156] *Id*., p. 108, l. 5-6.

First, most other stakeholders participating in this case strongly objected to the reduced MWh savings targets proposed in Ameren Missouri's MEEIA Cycle 2 plan. Several, though not all, specifically objected to the elimination of savings targets related to CFLs. For example, Dr. Alex Schroeder, a witness for the Missouri Department of Economic Development Division of Energy ("DE"), observed the proposed reduction in Ameren Missouri's lighting program was the primary factor contributing to a reduction in savings targets for the Residential Portfolio from more than 505,000 MWh in Cycle 1 to approximately 166,000 MWh in Cycle 2.[157] Although he acknowledged a baseline shift to accommodate evolving EISA standards likely would result in some reduction in the residential lighting target, Dr. Schroeder questioned the Company's rationale for eliminating CFLs. He suggested Cadmus's estimate of thirty percent socket saturation for CFLs was too low, and cited a study supporting forty percent as a more reasonable estimate.[158] He also challenged Mr. Voytas' conclusions regarding the EISA standard:

> [T]reating the EISA standard as the baseline against which savings are to be measured is problematic. The EISA standard governs the import and manufacture of inefficient bulbs, but does not ban the sale or use of remaining bulbs that do not meet the standard. Therefore, it says nothing about the kinds of bulbs that Ameren's customers are actually using, particularly in the aftermath immediately following the point at which it goes into effect.[159]

Second, on May 19, 2015, Cadmus filed its Program Year 2014 EM&V report on Ameren Missouri's residential lighting program. The following were among the key conclusions and recommendations included in that report:

> **Conclusion 1.** EISA regulations ending the manufacture of incandescent bulbs had a more gradual effect on the market than Ameren Missouri anticipated in its TRM. The Cadmus dema found that even 100W incandescent bulbs – the first to

[157] Ex. 200, p. 3, l. 14-16 (Schroeder Rebuttal).
[158] *Id.*, p. 5, l. 17-19.
[159] *Id.*, p. 4, l. 3-8. *See also*, Ex. 201, p. 15 ("[I]t is not correct to assume that the EISA standard 'removes the most inefficient products from the market;" such products may still remain on store shelves or in the closets of consumers for some time").

be phased out under EISA regulations – persisted in 7% of retail locations in the last quarter of PY14. . . .

Recommendation 1. Anticipate that a slow phase out will "float" the baseline wattage above the "post-EISA" value for 40W and 60W at least one to two years after EISA implementation.

Conclusion 3. In an effort to tap an otherwise hard-to-reach market, the program deliberately shifted more program sales into discount retailers in 2014. The effort was successful, in the sense that the percent of sales in discount retailers rose ten points. . . .

Recommendation 3. Continue to work with discount retailers to increase uptake at discount retail stores.[160]

In recognition of both concerns expressed by other parties to this case and Cadmus's findings and recommendations in its 2014 EM&V report, and based on input from DE,[161] the June 30 Stipulation restores CFLs to Ameren Missouri's residential lighting program for MEEIA Cycle 2, albeit on a limited basis and for a limited time. As described in paragraph 14 of that stipulation, the Company will incent a maximum of 1,150,000 CFLs in 2016, which will be sold only in grocery, drug, discount and online store channels. The stipulation establishes a budget of approximately $1.7 million for the limited CFL program, and estimates the program will produce 27,722 MWh of energy savings.

The limitations the stipulation imposes on the distribution of incentive-eligible CFLs during 2016 is consistent with the third conclusion and recommendation from Cadmus' 2014 EM&V report, which were identified earlier in this brief. During hearings in this case, Ameren Missouri witness Mr. Dan Laurent further explained why the signatories chose to limit CFL incentives to only bulbs purchased at distribution channels identified in the stipulation:

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[160] The Cadmus Group, Inc., *Ameren Missouri Lighting Impact and Process Evaluation: Program Year 2014* (filed May 19, 2015, in File No. EO-2012-0142). *See also*, Tr. p. 311 to P. 314.
[161] Ex. 110, p. 2, l. 17-20 (Laurent Supplemental).

> [W]e thought that that's the area where customers that shop in those types of locations, more urban locations, are less likely to be able to or want to buy the more expensive LED lights. So if we want to continue – if we were going to continue CFLs, we wanted to get an area where customers needed it the most. And in our mind, that's the kind of neighborhood, the more urban type of smaller retail stores as opposed to large discount stores.[162]

Staff and OPC oppose adding CFLs to Ameren Missouri's Cycle 2 portfolio, even on the limited basis specified in the June 30 Stipulation. Staff's opposition is based on its contention that the benefits derived from CFLs will have no effect on the need for future supply-side investment.[163] But Staff's contention is at odds with the testimony of NRDC. NRDC's witness, Philip Mosenthal, believes CFLs can contribute to demand savings.

> I wouldn't look to CFLs as a demand-saving measure, compared to others, but CFL, as people have testified, can provide some demand savings because they can avoid some peak – probably hard to measure, but clearly some can – you know, some demand savings can be associated with CFLs.[164]

OPC's opposition to CFLs is based on two arguments. First, OPC contends Ameren Missouri "transformed" the residential market for CFLs during MEEIA Cycle 1, so additional energy savings from that type of bulb are not achievable during Cycle 2. Second, OPC asserts that because LEDs are now the baseline for energy efficient lighting under EISA, it would be improper for the Company to incent customers to use less efficient CFL technology during Cycle 2.[165] Both of OPC's arguments should be rejected.

There can be no question about Ameren Missouri's phenomenal success in promoting CFLs during MEEIA Cycle 1. Whether that effected a "transformation" of the residential lighting market is debatable. But, questions regarding market transformation are immaterial to issues related to the limited extension of CFL incentives in the June 30 Stipulation, because

[162] Tr. p. 311, l. 19 to p. 312, l. 2.
[163] Staff's Initial Brief, p. 49, fn. 114.
[164] *Id.*, p. 582, l. 11-16.
[165] OPC Initial Brief, pp. 11-12.

evidence in this case establishes that regardless of how many CFL's were sold during Cycle 1 there is an opportunity – albeit limited – to sell still more during 2016. The hearing testimony of Sierra Club witness Tim Woolf shows how little he thinks of OPC's market transformation argument: "Well, first of all, market transformation is very difficult to pin down. And from a lot of information in this docket, it's clear that there's an additional opportunities [sic.] from both CFLs and LEDs in Ameren's service area."[166] One example of the information to which Mr. Woolf referred is Cadmus' 2014 EM&V report on the Company's lighting program, the relevant portions of which were described earlier in this brief. The CFL proposal included in the June 30 Stipulation is specifically tailored to exploit the CFL opportunity Cadmus identified.

OPC's concerns about LEDs and the EISA standard are equally unfounded. The proposal to incent CFLs on a limited basis for 2016 only will not divert the Ameren Missouri's attention from LEDs, which remain the primary focus of the Company's energy efficient lighting program through the three-year duration of Cycle 2.[167] But changing the focus from CFLs to LEDs is the main reason the energy efficiency target for lighting declined so dramatically from Cycle 1 to Cycle 2. LED bulbs are much more expensive than CFLs, and Ameren Missouri therefore expects far fewer energy efficient bulbs will be sold during Cycle 2.[168] As a result, achieved KWh savings also will be less in Cycle 2.

But despite the fact the EISA standards are focused on LEDs during the three years the MEEIA Cycle 2 plan will be in effect, testimony in this case suggests there is still a market for CFLs during that period. By tapping that market, Ameren Missouri can increase KWh savings

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[166] Tr. p. 426, l. 20-24.
[167] *Id*. p. 263, l. 25 – p. 264, l. 4.
[168] *Id*. p. 264, l. 21-25.

from its lighting program. This potential benefit was described in testimony filed by DE witness Dr. Alex Schroeder:

> The EISA standard governs the import and manufacture of inefficient bulbs, but does not ban the sale or use of remaining bulbs that do not meet the standard. Therefore, it says nothing about the kinds of bulbs that Ameren's customers are actually using, particularly in the aftermath immediately following the point at which it goes into effect. In other words, the EISA standard says nothing about the actual bulbs Ameren's customers would be replacing with rebated bulbs.
>
> . . .
> EISA does not prohibit the continued sales of remaining inventories of bulbs that do not meet current standards. That means there remain alternative options for customers in the short-run, and rebates can help incent customers to purchase a CFL over a less efficient bulb. But we can go one step further. Even if we assume that CFLs in Ameren's service area are the least efficient option available (i.e., inventories of less efficient bulbs have been sold off), rebates can still play an important role in accelerating the diffusion of CFLs in Ameren's service territory. Rebates lower the price a consumer faces in the market, which may well incent her to purchase more CFLs that she otherwise would.[169]

OPC acknowledges there are light bulbs less efficient than CFLs and LEDs available for purchase in Ameren Missouri's service area. A table reproduced at page 11 of OPC's Initial Brief shows in the fourth quarter of 2014 substantial numbers of incandescent bulbs remained on stores in the Company's service area. And while it is possible the number of stores still stocking such bulbs has reduced somewhat since the end of 2014, there is no evidence in this case that establishes, or even suggests, such bulbs have disappeared altogether. The limited extension of CFL rebates the June 30 Stipulation provides thus affords low-income customers an energy efficient lighting choice through 2016 that likely would be beyond their reach financially if Ameren Missouri limits its Cycle 2 lighting program rebates to LEDs.

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[169] *Id*. p. 4, l. 4-10; p. 6, l. 5-13.

C. Public Facilities.

Paragraph 11 of the June 30 Stipulation would make state and federal public facilities eligible to participate in Ameren Missouri's Cycle 2 energy efficiency programs. The stipulation further provides that even if government mandates require such facilities to reduce energy consumption, reductions achieved at those facilities will not automatically be considered to be deemed a "free rider," which would prevent the Company from counting those reductions as achieved energy savings for EM&V purposes. Finally, the stipulation establishes a 25,000 MWh savings target for public facilities and establishes a program budget of $7.3 million to achieve that objective.

OPC is the only party to oppose this aspect of the June 30 stipulation in its Initial Brief. As stated there, OPC argues public facilities subject to a governmental mandate will reduce energy consumption regardless of whether Ameren Missouri offers incentives, and because OPC believes the Company's MEEIA programs were not responsible for energy savings achieved at those facilities it would be wrong to count those savings for EM&V purposes.[170] To do otherwise would require customers to compensate and reward Ameren Missouri for results it had little or nothing to do with.[171]

Ameren Missouri did not include government facilities in the original MEEIA Cycle 2 filing, and Mr. Voytas explained why the Company reached that conclusion:

> If federal and state office buildings are under mandates to increase the energy efficiency of their buildings, that means that these facilities will invest in energy efficiency with or without the financial assistance from an electric utility energy efficiency program. This means that these facilities may be considered 100% free riders, which means that utilities have the obligation to allow these facilities to participate in utility energy efficiency programs, pay the appropriate financial

[170] OPC's Initial Brief, pp. 12-13.
[171] Ex. 803, p. 19, l. 1-3 (Marke Supplemental Rebuttal).

> incentives under the applicable energy efficiency tariffs, but may not claim the energy savings associated with these projects.[172]

But rebuttal testimony filed by Mr. Mosenthal challenged Ameren Missouri's free ridership assumption by pointing out government energy efficiency mandates do not always come with sufficient funds to turn those mandates into reality.

> In reality, public sector buildings are highly budget constrained, have a hard time implementing even those projects with very attractive paybacks due to budget constraints and long backlogs of needed repairs, and often are unable to meet those goals. Indeed, multiple evaluations of public sector programs in states with the same federal mandates than [sic.] have found fairly high net-to-gross ratios. . . Regardless of whether some of the potential public sector customers might represent free riders, it is clear that this sector is eligible to participate in Ameren's MEEIA business programs unless they qualify under the opt-out provisions, and Ameren would naturally count these savings in their programs.[173]

Because the signatories to the June 30 Stipulation were willing to specify that the existence of an energy efficiency mandate was not by itself sufficient to classify a government facility as a free rider, Ameren Missouri agreed to include such facilities in its MEEIA Cycle 2 plan. Available incentives could provide the "something extra" budget constrained government facilities need to satisfy mandated minimums for energy efficiency. Allowing such facilities in Ameren Missouri's Cycle 2 energy efficiency programs also may enable them to exceed mandated minimums by installing more costly, but more energy efficient, measures than otherwise would have been possible without the incentives.[174] Even though it was not a signatory to the June 30 Stipulation, this is an approach Sierra Club endorses. When its witness was asked whether the existence of executive orders or legal mandates was a legitimate basis for excluding government facilities from the Company's energy efficiency programs, he responded the more

[172] Ex. 112 NP, p. 97, l. 6-12 (Voytas Surrebuttal).
[173] Ex. 301, p. 11, l. 14 to p. 12, l. 5 (Mosenthal Rebuttal).
[174] Tr. p. 320, l. 14-21.

"thoughtful response" would be to identify ways Ameren Missouri could allow government facilities to go above and beyond what they otherwise would do.[175] He went on to state such a program could be designed so such facilities are not free riders, and that only those extra energy efficiency opportunities they adopt are counted among the Company's achieved savings.[176]

The proposal to add government facilities to Ameren Missouri's Cycle 2 energy efficiency programs will further the objective of achieving cost-effective demand-side savings while also ensuring the Company receives credit for energy savings it helps those facilities achieve. As Mr. Laurent made clear during the hearing, if the Commission makes government facilities eligible for Cycle 2 programs, the Company will not use that authority to take credit for energy efficiency measures those facilities would have implemented on their own.[177] And by adopting a standard that the existence of a government mandate is not by itself a basis for declaring a government facility a free rider, the Commission will ensure Ameren Missouri can claim credit for those efficiency gains that would not have been possible without its Cycle 2 programs.

D. Combined Heat and Power.

Paragraph 13 of the June 30 Stipulation proposes to make CHP measures eligible under Ameren Missouri's business custom program, provided those measures pass a cost-effectiveness test specified in the stipulation. Mr. Laurent stated CHP measures were included in the stipulation based on input from DE,[178] whose witness testified CHP systems have been shown to offer energy savings of sixty to eighty percent compared to just forty-five percent efficiency

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[175] *Id.*, p. 431, l. 21.25.
[176] *Id.*, p. 432, l. 5-8.
[177] *Id.*, p. 342, l. 6-10.
[178] Ex. 110, p. 6, l. 3-5 (Laurent Supplemental).

savings from separate heat and power.[179] In addition, he noted "CHP, like load management and interruptible or curtailable load programs, allows for peak shaving and load shifting to off-peak periods, reducing the need for additional generation and transmission infrastructure to meet peaking requirements."[180]

NRDC's witness Philip Mosenthal also testified in support of the addition of CHP to Ameren Missouri's portfolio.

> Other jurisdictions have seen significant success promoting CHP as part of their efficiency programs. The US currently generates of 12% of its electricity from CHP installations, and several European countries get of 20% of their electric needs from CHP. CHP projects are often very large, and just a couple of large installations in the 2016-2018 time period could increase the MEEIA planned savings dramatically. Further, due to the large average size, CHP programs can often capture savings at a very low program cost.[181]

Sierra Club's witness agrees, testifying "CHP typically saves a lot of electricity – electric energy."[182]

Based on Initial Briefs, Staff is the only party who appears to oppose adding CHP to the Company's MEEIA Cycle 2 energy efficiency portfolio. Staff appears to base its opposition on two factors. First, Staff argues CHP has not been shown to be cost-effective.[183] Second, Staff contends adding CHP is inconsistent with both the terms of the MEEIA statute and the Commission's rules implementing that statute.[184] Staff's first argument ignores the hearing testimony of Mr. Voytas, who stated the Company's pending IRP includes case studies that found CHP to be cost-effective.[185] Staff's argument also ignores the fact the June 30 Stipulation specifically states that in order to be eligible under the business custom program all CHP

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[179] Ex. 200, p. 7, l. 8-10 (Schroeder Rebuttal).
[180] *Id.*, p. 8, l. 9-11.
[181] Ex. 301, p. 35, l. 5-11 (Mosenthal Rebuttal).
[182] Tr. p. 427, l. 24 to p. 428, l. 1.
[183] Staff Initial Brief, pp. 16-17.
[184] *Id.*, p. 16.
[185] Tr. p. 247, l. 12-22.

measures must pass a cost-effectiveness test specified in the stipulation.[186] Staff's second argument ignores DE's testimony that CHP fits within the definitions of "demand-side program" found in the MEEIA statute and the Commission's rules.

> The broadly enabling words "any program" and "including, but not limited to" provide sufficient flexibility to include CHP. Any applicable program must only "modify the net consumption of electricity on the retail customer's side of the meter," but the applicable language does not mandate a decrease in electricity consumption over a specified period of time.[187]

Staff further ignores language in the June 30 Stipulation designed to deal with the possibility CHP cannot lawfully be included in the Company's Cycle 2 plan. If a reviewing court determines CHP costs are ineligible for recovery under MEEIA, the signatories to the stipulation have agreed to seek an accounting authority order to defer those costs for Commission consideration in a subsequent rate case.

E. Stakeholder Collaborative vs. Delphi Panel.

One of the most contentious issues in this case is whether energy efficiency savings targets included in the Company's original filing identify all cost-effective energy efficiency opportunities for MEEIA Cycle 2. Despite the controversy surrounding that issue, there seems to be consensus among all parties on one thing: additional energy savings opportunities may exist. But that consensus ends on what process should be used to identify those additional savings opportunities, if they exist, and to set appropriate targets to incent Ameren Missouri to pursue those opportunities and ensure they are achieved to the greatest degree possible.

The competing stipulations present two diverse views of what process best achieves those objectives. The June 30 Stipulation recommends creation of a stakeholder collaborative process through which interested parties would "work together to identify additional cost-effective

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[186] June 30 Stipulation, pp. 8-9, ¶13.
[187] Ex. 200, p. 8, l. 4-11 (Schroeder Rebuttal).

savings strategies to be implemented for program years 2017 and 2018."[188] The collaborative would meet January through April 2016, and would address a wide range of potential savings strategies including, but not be limited to:

> expanding upstream programs to include additional lighting, HVAC and consumer electronics; including residential behavioral initiatives to inform consumer of their energy usage and to market other residential programs; using whole building benchmarking as a tool to prioritize existing buildings over 50,000 square feet for delivery of energy efficiency services; working with large employers in the service territory to market energy efficiency services to their employees; assistance with deep retrofits of existing public (state, county, municipal) buildings; assistance with whole building deep energy savings for new construction and existing buildings; supporting adoption and training efforts to advance energy codes in local political subdivisions; whole home approaches for new and existing homes, home-audit with direct install, co-delivery with gas utilities; low-income approaches not addressed in the multi-family program; and assistance with financing of energy efficiency services for multi-family buildings at the time of re-financing by developing a loan loss reserve fund.[189]

Mr. Laurent testified the collaborative process is designed to encourage Ameren Missouri to find as much cost-effective energy savings as possible and include those savings in its Cycle 2 plan.[190] And although the stipulation does not explicitly state Ameren Missouri will implement savings strategies identified by the stakeholder collaborative, he confirmed that is what the signatories intended and what the Company intends to do.[191]

The Non-Utility Stipulation proposes convening a "panel of experts," the "Delphi Panel," referenced earlier.[192] OPC's Initial Brief describes this process as the "only practical way to fix the low energy savings targets that stem from Ameren's flawed market potential study and

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[188] Under the June 30 Stipulation, energy savings targets for PY 2016 would be those set forth in Tables 1 and 2 of the stipulation. The stipulation also sets savings targets for PY 2017 and 2018, but those targets would be subject to revision based on agreements reached by stakeholder collaborative.
[189] June 30 Stipulation, p. 10, ¶15.
[190] Tr. p. 317, l. 24 to p. 318, l. 3.
[191] *Id.*, p. 317, l. 17-21.
[192] Ex. 800 NP, p. 16, l. 2-4 (Marke Rebuttal).

resolve future conflicts."[193] But an examination of the structure of the proposed Delphi Panel and how it would work shows that OPC's description grossly overstates the benefits of such a panel and its likelihood of success.

As described in the Non-Utility Stipulation, the panel would consist of a mediator and an unknown number of "experts." The stipulation does not specify any qualifications for either the mediator or any of the panel members,[194] and according to OPC witness Dr. Geoff Marke the mediator would not have to be an expert in energy efficiency[195] and neither the mediator nor any of the panel members would have to be knowledgeable about Ameren Missouri's service area.[196] It is hard to imagine how anyone lacking such basic knowledge could truly qualify as an expert whose recommendations about what additional energy efficiency targets should be adopted for the Company could be considered credible.

It also is unclear what role the leader of the Delphi Panel would play. The Non-Utility Stipulation identifies this person as a "mediator," but when Dr. Marke was confronted with the fact that word appears in none of the articles identified in his Supplemental Direct Testimony as support for the proposed Delphi Panel he stated the word "facilitator" more accurately describes the leader's role.[197] But mediators and facilitators perform different functions. A mediator is a neutral who works with parties with opposing or different viewpoints and attempts to bring those parties to consensus,[198] while a facilitator is simply "a person who is responsible for leading or coordinating the work of a group."[199] Unlike a mediator, a facilitator is not obligated to try to achieve consensus among panel members, and, as will be discussed *infra*, that distinction can

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[193] OPC Initial Brief, p. 33.
[194] Tr. p. 624, l. 18-22.
[195] *Id.*, p. 628, l. 17-23.
[196] *Id.*, p. 630, l. 3-12.
[197] *Id.*, p. 623, l. 10-13.
[198] *Id.*, p. 621, l. 8-12.
[199] *Webster's New Universal Unabridged Dictionary*, p. 690 (2001).

greatly change the nature of any recommendations the proposed Delphi Panel might choose to make.

Dr. Marke also acknowledged that the Non-Utility Stipulation vests Ameren Missouri with sole authority and discretion to select the facilitator and the method the facilitator will use to choose the panel of experts and how many experts will serve on that panel.[200] The only input any other party would have in that process would be Staff's limited input on "formation of the RFP" the Company would use to select the facilitator.[201] When considered in light of the process the panel will employ to make its recommendations, it is hard to believe the process for selecting the facilitator and the panel will cause other stakeholders to be more supportive of energy savings targets proposed by the Delphi Panel than they have been of the targets proposed by the recognized experts Ameren Missouri used to prepare its original MEEIA Cycle 2 filing.

Although the terms of the Non-Utility Stipulation suggest the Delphi Panel's final recommendations will rely on recommendations of panel members, Dr. Marke acknowledged the facilitator will be solely responsible for making the panel's recommendations regarding additional energy savings targets.[202] And because the panel's leader is a facilitator and not a mediator, his or her decision may be based on the opinions of some or all panel members or solely on the facilitator's opinions. It all depends on how the facilitator sets up the methodology the Delphi Panel will use to make its recommendation.[203] There will be no way for stakeholders to know, because they will not have been involved in the panel's deliberations and the Non-Utility Stipulation only requires the facilitator to report his or her final recommendations. It does not require any description of how those recommendations were developed. Such a process is not

[200] Tr. p. 630, l. 14-23.
[201] Non-Utility Stipulation, p. 4, ¶2.d.
[202] Tr. p. 639, l. 9-13.
[203] *Id*., p. 639, l. 3-8.

the "open and transparent review of the expert's conclusions" described in Renew Missouri's Initial Brief.[204]

The Delphi Panel process recommended in the Non-Utility Stipulation stands in sharp contrast to numerous stakeholder participation opportunities in the collaborative process the June 30 Stipulation proposes. The proposed Delphi Panel process offers only one opportunity for input from interested stakeholders: written comments or testimony that would be filed after the panel completes its work that the facilitator formally files with the Commission with his or her savings target recommendations.[205] That is the same process that had been followed thus far in this proceeding, and it is difficult to imagine how repeating that process will lead to a better result than the parties have thus far been able to achieve.

Perhaps the biggest reason to reject the proposed Delphi Panel is the one alluded to in the preceding sentence: it would require the parties – and the Commission – to duplicate the same process they are in the midst of in the current case. Dr. Marke admitted this in response to questions from the Company's counsel, although he characterized that result as "an awfully good deal for the Company."[206] Ameren Missouri disagrees; being forced to expend the time and resources necessary to repeat a process already underway with little or no expectation of a better result is anything but a good deal for the Company or anyone else.

Although both Sierra Club and Renew Missouri support the Non-Utility Stipulation's Delphi Panel proposal, upon closer examination those parties' positions appear to be more compatible with the proposed stakeholder collaborative. For example, Renew Missouri's Initial Brief argues that only the Delphi Panel concept provides a feasible method for resolving issues

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[204] Renew Missouri Initial Brief, p. 11.
[205] Non-Utility Stipulation, p. 4, ¶2.d.iii.
[206] Tr. p. 642, l. 4 to p. 643, l. 7.

regarding customer participation rates, identifying and establishing additional savings targets, and incenting the Company to achieve those targets.[207] But the preceding analysis of both the Delphi Panel and stakeholder collaborative processes show that this contention is not true.

Sierra Club witness Tim Woolf acknowledged this when he testified the stakeholder collaborative presents a path to finding additional cost-effective energy savings, although he testified a "fatal flaw" in that proposal prevented him from supporting it.[208] The perceived flaw stems from the fact any additional savings targets identified by the collaborative would not result in any change in the performance incentive target of 583,536 MWh specified in the June 30 Stipulation. Mr. Woolf argues that not moving the incentive target acts as a "powerful disincentive" to Ameren Missouri agreeing to any additional targets the collaborative might recommend.[209] But Mr. Woolf's analysis is faulty, and his conclusion is wrong. Not allowing any adjustment in the performance incentive target provides a *powerful incentive* to Ameren Missouri to agree with additional savings targets recommended by the collaborative, because the more energy efficiency measures the Company promotes and supports during Cycle 2 the more likely it will be able to achieve its performance incentive targets. Stated another way, if Ameren Missouri believes it can meet its incentive targets with six energy efficiency programs, increasing that number to nine or twelve will improve the Company's odds. Since Mr. Woolf testified other states use the Delphi Panel method as a collaborative process,[210] one can only speculate what Sierra Club's position on the stakeholder collaborative would be if its witness reconsiders and concludes that proposal is not afflicted with a fatal flaw after all.

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[207] Renew Missouri Initial Brief, p. 12.
[208] Tr. p. 434, l. 9-15
[209] *Id.*, p. 465, l. 5-16.
[210] Tr. 469, l. 4-9.

Another problem with the Delphi Panel proposal is it provides no MWh energy savings targets for 2016, and would only provide targets for 2017 and 2018 if the panel makes such recommendations and the Commission approves them. The lack of such targets denies Ameren Missouri any opportunity to earn performance incentives for PY 2016, and may deny it the same opportunity for PY 2017 and 2018 as well. In contrast, the June 30 Stipulation establishes targets for 2016, 2017, and 2018, but allows for modification of the 2017 and 2018 targets based on recommendations made by the proposed stakeholder collaborative. This approach is obviously more fair to Ameren Missouri, but it also is the only approach that comes close to satisfying MEEIA's requirements that (1) the Company's financial incentives are aligned with helping customers achieve energy efficiency, and (2) it is afforded timely earnings opportunities associated with cost-effective energy efficiency measures designed to reduce customers' MWh usage.

Finally, the Delphi Panel is intended to develop MWh savings but yet the Non-Utility Stipulation incentive structure is based on *demand* goals. There is no mention about how the costs of such savings will be estimated either. This highlights a critical flaw underlying the entirety of the Non-Utility Stipulation – it is internally inconsistent. The Non-Utility Stipulation simply does not incent cost-effective behavior because the costs are not factored into any performance criteria and aren't even a topic for the Delphi Panel. This is completely at odds with Staff's position regarding the amount and risk of benefits expected for customers. In fact, Staff witness Rogers testified that he does not expect the additional savings identified by the Delphi Panel to be screened with the same rate impact analysis he is relying on to ward the Commission away from the June 30th Stipulation.[211]

[211] Tr. p. 737, ll. 17-22.

F. Brightergy Issue.

Brightergy, LLC ("Brightergy") asks the Commission to order Ameren Missouri to provide incentives for business energy efficiency measures in an amount equal to the lower of fifty percent of the measure's cost or a buy-down to a two-year payback.[212] In its Initial Brief, Brightergy argues the Commission does not have to weigh evidence in favor of or opposition to that proposal because "there is no evidence contradicting Brightergy's witnesses."[213] Brightergy is correct that no party filed testimony either supporting or opposing its position. But that statement ignores a critical fact: no party had an opportunity to file such testimony because Brightergy made its proposal for the first time in rebuttal testimony filed July 15, 2015 – the last day any party was authorized to file testimony, and just two business days before the start of evidentiary hearings in this case.

The Commission should not allow Brightergy to profit from its decision to wait until the eleventh hour to propose a change to Ameren Missouri's Cycle 2 plan, a change that could have been presented as early as March 20, 2015, when all parties were required to file rebuttal testimony.[214] Perhaps the proposal has merit; perhaps it does not. There is not enough evidence in this case for the Commission to make a determination. All that can be said now is Brightergy's tactical decision to wait until July 15 to make its proposal denied all parties an opportunity to comment. If Brightergy believes its proposal has merit, it can submit it for consideration by the stakeholder collaborative, where it can be considered by all interested parties.

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[212] Ex. 1501, p. 3, l. 8-13 (Snider Rebuttal).
[213] Brightergy Initial Brief, p. 2.
[214] Nor can the Company be forced to implement Brightergy's 11th-hour proposal because, at least at this point, it would reflect a modification to the Company's Plan that is not acceptable to the Company.

VII. CONCLUSION

For the reasons stated above, Ameren Missouri respectfully requests that the Commission approve the Plan as modified by the June 30 Stipulation. This will implement the state's policy of allowing Ameren Missouri to value investments in demand-side resources equal with making investments in supply or delivery infrastructure, and will permit the Company to continue the pursuit of all cost-effective energy efficiency savings in its service territory in a manner that benefits both the Company and its customers.

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Dated: August 26, 2015

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed, this 26th day of August, 2015, to counsel for all parties on the Commission's service list in this case.

/s/ Matthew R. Tomc