

CSR 240-20.094(3). Parties have argued that this statute essentially allows the applying utility to reject any modification to which the utility does not assent.

The modifications that the parties to the Non-Utility Stipulation have asked the Commission to implement are material to Ameren's proposal in such a way as to remove a proposal and replace it with their alternative proposal. There is no way to merge the two separate TD-NSB proposals in a manner that maintains the integrity of Ameren's original proposal. In contrast, Brightergy's proposal only serves to clarify what has already been filed in Ameren's original filing.² Ameren's definition of its business custom rebate program is broad, allowing room for additional specification without frustrating the ultimate purpose or the material integrity of the Ameren proposal. Brightergy's proposal provides this specification.

In this sense, it is not a modification that would fundamentally or materially change Ameren's MEEIA plan. Instead, it adds detail to a broad program laid out by Ameren's stipulation. This does not rise to the level of what the statute may or may not allow. De minimis change which does not fundamentally alter the plan should be acceptable to the Commission. If the Commission adopts it, it will not affect funding levels, TPD, or any other contested issue. This is not a major modification. This is a detail, providing specificity to what Ameren has already filed. This is in contrast to the material change requested by the signatories to the Non-Utility Stipulation.

Additionally, the Commission can take Ameren's silence on the issue to indicate its assent to it. Ameren did not take advantage of the many opportunities during the evidentiary hearing to rebut Brightergy's points or object to the program. Ameren's witnesses could have disputed Brightergy's contentions, its attorneys could have argued points in opening statements or questioned Brightergy's witness during cross examination, or argued against the merits or legality of the plan in its Initial Brief.

The testimony clearly demonstrates that when an alternative position was proposed by other intervenors, Ameren made their objections known. When provisions of the competing stipulation and agreement were presented, Ameren stated that these provisions were unacceptable to the Commission. So much so, that Ameren made it clear that if those provisions were accepted, Ameren would not continue with any of their MEEIA plans. However, when Brightergy's witness presented their testimony, there was no objection. In fact, there were no questions or concerns raised by any of the parties in this case.

² Ex. 100, at 8 and 16, defining Ameren's custom rebate program as follows: "Applies to energy efficient measures that do not fall into the Standard Incentive program. These projects are often complex and unique, requiring separate incentive applications and calculations of estimated energy savings."

Further, the Commission does not need to decide whether or not to accept Ameren's proposal precisely as it has been presented, because that is not what Ameren has asked for. Rather, Ameren has asked the Commission to extend its MEEIA I program, with substantially the same modifications it has requested in the Utility Stipulation.^{3 4} Thus, the Commission can adopt Brightergy's proposal while granting Ameren's requests.

Brightergy's program design proposal is not a replacement, displacement, or rejection of anything Ameren has proposed in its Cycle II filing as modified by the Utility Stipulation.

CONCLUSION

The Commission has the legal authority to rely on the ample, competent, and undisputed evidence in the record to order Brightergy's program change as outlined in testimony. Any of the plans put before the Commission will benefit from Brightergy's proposal moving the needle and achieving more savings than without it. There has been no written or live testimony or any other evidence that demonstrates that any party objects to Brightergy's position in this case. Therefore, this Commission can fully accept and adopt Brightergy's positions.

³ See Initial Brief of Ameren at 4: "With respect to its modified Plan, the Company requests the Commission's authorization to continue offering energy efficiency incentives to customers in a manner largely consistent with the framework already established for MEEIA cycle 1. That framework satisfies both regulatory and business objectives" (emphasis added).

⁴ Id. at 16. "In this case, Ameren Missouri seeks approval of a TD-NSB mechanism that is substantially similar to the one approved by the Commission in the Company's MEEIA cycle 1 Plan and presently in effect today" (emphasis added).

WHEREFORE, Brightergy respectfully asks the Commission to order Ameren to revise its MEEIA tariff to include the language suggested in Appendix A to Paul Snider's Rebuttal Testimony.

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Respectfully submitted,

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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 all parties on the Commission's service list in this docket.

/s/ Andrew J. Zellers