

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's 2nd Filing to Implement) **File No. EO-2015-0055**
Regulatory Changes in Furtherance of Energy)
Efficiency as Allowed by MEEIA)

REPLY BRIEF OF RENEW MISSOURI

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COMES NOW Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”), by and through counsel, and for its Reply Brief in the above-captioned case states as follows:

INTRODUCTION

Renew Missouri is very interested in seeing energy efficiency continue and grow in Missouri. We want our State’s investor-owned utilities to earn large returns on their investments in demand-side management programs as they develop new, innovative ways to encourage customers to use less energy. In particular, we want to see Ameren Missouri – who has led the way on energy efficiency as the State’s largest utility – continue to add value for its shareholders through investments in DSM. But it is imperative to ensure that these investments are meeting one of the central goals of the Missouri Energy Efficiency Investment Act (MEEIA): capturing all cost-effective demand side savings. It is for this reason that Renew Missouri recommends the Commission take special care to approve a Plan that provides a workable path forward for identifying additional cost-effective savings and establishing a higher savings target.

DISCUSSION

This Reply Brief responds to several of the parties’ arguments in initial briefs, and recommends a method by which the Commission may approach its decision. Overall, this brief addresses two points: 1) that the Commission’s authority extends beyond a decision to approve one stipulation or the other; and 2) that the proposed “Expert Panel” concept is the best way of ensuring Ameren Missouri’s Plan meets the MEEIA statute’s goal of demonstrating progress toward achieving all cost-effective savings.

As we stated in our Initial Post-Hearing Brief, Renew Missouri considers the Non-Utility Stipulation (to which we are a signatory) as merely a statement of position. Accordingly, we reserve the right to advocate for changes or deviations from the Non-Utility Stipulation.

I. THE COMMISSION IS NOT CONSTRAINED TO APPROVAL OF ONE STIPULATION OR THE OTHER.

As Renew Missouri laid out in its Initial Post-Hearing Brief, MEEIA grants the Commission broad authority to both interpret what is permissible under the statute and to oversee approval of a utility's MEEIA plan.¹ In initial post-hearing briefs, multiple parties characterize the Commission's role in this case as a decision between two Stipulations, leaving no room for compromise or nuance in a potential Order of the Commission. As explained below, we believe the Commission is not constrained to such a narrow, binary decision; instead the Commission has wide latitude to accept or reject any of the provisions in either Stipulation, or to develop a compromise according to its own reading of the MEEIA statute and rules.

The Missouri Division of Energy (DE) states the following in its brief: "[o]ther than approval of the original Plan or outright rejection of the Plan, approval of the Company Agreement is the Commission's only choice based on its own rules."² This statement drastically oversimplifies the Commission's authority under the statute and the rules. DE gives no citation or justification for why the Commission should be limited to a simple approval or disapproval of plans or stipulations brought before it. Nothing in the statute or the rules prevents the Commission from adopting certain settlement provisions and rejecting others. For example, under the MEEIA rules, the Commission would be within its authority to adopt the Expert Panel proposal in the Non-Utility Stipulation, but also adopt the DSIM proposal in the competing Utility Stipulation. In theory, nothing prevents the Commission from articulating its own compromise provisions in an Order, so long as those provisions are authorized by law and are later accepted by the utility.

Moreover, DE's brief includes a mistaken understanding of the MEEIA rules. In addition

¹ "Initial Post-Hearing Brief of Renew Missouri," at pg. 3-7.

² "Missouri Division of Energy's Initial Post-Hearing Brief," at pg. 6.

to a simple rejection or approval of a MEEIA application, the Commission may exercise a third option to “approve with modifications acceptable to the electric utility...”³ DE incorrectly summarizes this provision, concluding that Ameren Missouri’s rejection of the Non-Utility Stipulation is equivalent to their final “non-acceptance” of any modifications the Commission might adopt beyond the Utility Stipulation.⁴ (emphasis added)

Indeed, based on this language, the Commission can only choose one of three options: to approve the original Plan, to approve the Company agreement (**since it is the only set of modifications which is explicitly acceptable to the Company at this time**), or reject the Plan altogether. The modifications in the Non-Company Agreement, whether the Signatories to the Non-Company Agreement like it or not, are unacceptable to Ameren Missouri; **approving any agreement other than the one Ameren Missouri has accepted amounts to an outright rejection of the Plan** and, at the very least, will jeopardize the continuation of utility-sponsored energy efficiency programs in Ameren Missouri’s service territory in the immediate future.

Renew Missouri asks that the Commission decisively reject the above reasoning. First, there is no reason to believe that each separate provision of the Non-Utility Stipulation would be enough to turn Ameren Missouri off to the prospect of making money from energy efficiency. As stated in our Initial Post-Hearing brief, it is doubtful that Ameren Missouri would refuse to pursue efficiency programs that offer its shareholders a clear opportunity to earn a substantial rate of return.⁵ Even DE admits that approving the Non-Utility Stipulation could simply result in “forc[ing] Ameren Missouri to go back to the drawing board to see if a new MEEIA plan could be developed.”⁶ This would surely be a preferable outcome to accepting Ameren Missouri’s terms (however unreasonable) out of fear that the Company would drop all efficiency efforts.

In addition, the Commission should reject DE’s argument for valid public policy reasons. A utility should not be able to use the threat of program discontinuation in order to get its way on

³ 4 CSR 240-20.094(3)

⁴ DE Brief at pg. 5.

⁵ See Renew Missouri brief at pg. 5-6.

⁶ DE Brief at pg. 5.

every single issue, even where its way runs counter to the letter and spirit of the law. Such deference to the will of utilities weakens the regulatory role of the Commission and emboldens the utility to continue pushing the limits in the future. It is not surprising that Ameren Missouri adopts this stance in negotiations; it is clearly in the Company's best interest to maximize profit while minimizing risk and regulatory oversight. But that does not mean it is in the best interest of ratepayers, nor does it mean that the best energy efficiency programs will result from the Company's preferred approach. A line must be drawn at some point. The only way to know whether a term is ultimately acceptable to the Company is for the Commission to first issue an Order articulating what it believes is supported under MEEIA.

The Commission has the authority to decide what is allowed by law and to approve a Plan that best serves the goals of MEEIA. As such, the Commission should avoid treating Ameren Missouri's disagreement with the Non-Utility Stipulation as its final "non-acceptance" of each and every provision within it. Instead, the Commission should carefully review all the proposals, and then approve a Plan that incorporates provisions most likely to lead to successful efficiency programs.

II. THE EXPERT PANEL PROPOSAL IS THE BEST WAY TO PROGRESS TOWARD ALL COST-EFFECTIVE ENERGY EFFICIENCY.

Regardless of what the Commission decides with respect to the DSIM, the performance incentive, or EM&V, Renew Missouri strongly urges the Commission to adopt the "Expert Panel" provision that was proposed in the Non-Utility Stipulation submitted on July 7, 2015,⁷ to which Renew Missouri is a signatory. This provision should be approved in addition to the other proposals intended to identify additional savings. The Expert Panel is the most trustworthy, workable method that has been proposed to identify additional cost-effective savings and to

⁷ "Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2," ("the Non-Utility Stipulation") at pg. 4, ¶ 2.d.

properly incent the Company to capture it.

Several of the Utility Stipulation signatories argue that their stipulation demonstrates better progress toward “all cost-effective” savings because it has a 37% higher savings target.⁸

DE’s witness Martin Hyman explained in his Supplemental Rebuttal Testimony:⁹

[t]he Company Agreement achieves this higher level of energy savings by adding more Multi-Family Low Income opportunities, a Small Business Direct Install Program, public sector program eligibility, and clarification of the eligibility of combined heat and power measures under the Company’s Business Custom Program.

Renew Missouri has no objection to this 37% higher savings target, and recommends that the Commission approve it along with the additional program offerings included in the Utility Stipulation. It is worth noting that the Non-Utility Stipulation includes the exact same Multifamily Low-Income program savings goal, but with slightly more beneficial program details.¹⁰ While Renew Missouri has no objection to the Commission approving this higher savings target, we do not see it as representing “substantially greater movement towards the goal of achieving all cost-effective demand-side savings.”¹¹ Even with this extra 37%, Ameren Missouri’s Plan would still represent a 26% reduction from its 2013-2015 Cycle 1 Plan,¹² and would fall well short of the levels of savings being achieved among similar utilities across the country. A further mechanism is needed in order to resolve the dispute over the actual level of achievable potential for the 2016-2018 period. It is for this reason that Renew Missouri joined

⁸ See “Initial Post-Hearing Brief of Ameren Missouri,” at pg. 9. See also “Initial Post-Hearing Brief of Natural Resources Defense Council,” at pg. 4: (“In addition, [the Utility Stipulation] requires much greater savings than the Staff/OPC Stipulation.”).

⁹ DE Brief at pg. 2, quoting Exhibit 202, “Supplemental Rebuttal Testimony of Martin Hyman,” pg. 8, 11, 18-19.

¹⁰ See Renew Missouri Brief at pg. 19.

¹¹ DE Brief at pg. 2.

¹² “Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing,” File No. EO-2012-0142. (793,100 MWh savings goal, compared to 583,000 MWh savings goal in the Utility Stipulation).

the Non-Utility Stipulation. While we may disagree with Staff and OPC on the initial savings target, that issue is secondary to a much larger issue: what is the best way to identify additional savings potential going forward, and how do we properly incent the Company to capture it? We believe the Expert Panel proposal best resolves that question.

Several parties also noted in their briefs that the Utility Stipulation proposes a collaborative process to figure out how to achieve further savings by considering new programs, strategies, and other means.¹³ This exact same collaborative process is found in the Non-Utility Stipulation as well. Given that the proposal is unopposed and supported by both Stipulations, the Commission should certainly approve it. However, we do not believe this unenforceable collaborative process is sufficient by itself to ensure that Ameren Missouri's Plan makes enough progress toward all cost-effective savings. Ameren Missouri has represented that it believes its Realistically Achievable Potential (RAP) scenario to be an accurate reflection of what the Company will be able to achieve; they have devoted substantial resources to defending that number and discrediting criticisms that far more achievable potential exists.¹⁴ A more official, intensive process is needed to resolve conflicts over customer participation rates and achievable potential.

In addition to the 37% higher savings goal and the collaborative process described above, the Commission should approve the Expert Panel proposal in the Non-Utility Stipulation.¹⁵ The aim of this process would be to engage a 3rd party mediator and leading experts in the field to resolve the central argument over the Company's customer participation rate adjustments in its 2013 Market Potential Study, over which the parties have vehemently disagreed for over a year. Much has been made of the Company's adjustments to customer participation rates or "take

¹³ See Ameren Missouri Brief at pg. 9; NRDC Brief at pg. 5; DE Brief at pg. 2-3.

¹⁴ See "Surrebuttal Testimony of Ingrid Rohmund."

¹⁵ The Non-Utility Stipulation, at pg. 4, ¶ 2.d.

rates” as justified by the YouGov study, so it is not necessary to restate the issue here. However, unless we resolve these major disagreements regarding the Potential Study, the parties will have little faith that Ameren Missouri’s savings target represents anything close to all cost-effective savings.

Crucially, the Expert Panel provides a way for the Commission to approve a new performance incentive based on the new recommended savings goals resulting from the experts’ opinions. This additional performance incentive would serve to motivate the Company to pursue the identified potential savings, provided that Ameren Missouri has fully engaged in the Expert Panel process and agrees with the conclusions of the experts and the 3rd party mediator. Ameren Missouri should welcome the Expert Panel process. If the Company believes that the participation rate adjustments are appropriate and defensible – as it has tried to establish in this case – then the panel should recommend a similar saving target and the Company would have an additional performance incentive. It is telling that Ameren Missouri resists consulting industry experts on this controversial topic.

NRDC raises several objections to the Expert Panel proposal in its brief. NRDC objects to Staff being the only party to have input into the RFP selecting the 3rd party mediator.¹⁶ Renew Missouri agrees that additional parties should have input in the RFP process; there is no significance for Staff being the only party listed beyond convenience and simplicity. We encourage the Commission to take this objection under consideration and approve a process that invites full participation of the parties.

NRDC also describes the process as “supposedly compulsory,” stating: “this process will only be successful if it is truly collaborative and consensus can be reached on goals that Ameren

¹⁶ NRDC Brief at pg. 6.

will accept and believes it can achieve.”¹⁷ In fact, this is exactly the goal of the Expert Panel proposal. The purpose of the Expert Panel is to consult the opinions of experts in order to lead to a recommendation for more appropriate savings goals, but only after a fully transparent process that achieves consensus among the parties. The proposal is in no way compulsory. Ameren Missouri would of course retain the ability to accept or reject the new targets, but the hope is that the Company would accept them due to the additional financial incentives that the Commission could approve.

CONCLUSION

The Commission has a difficult decision before it. Whatever the Commission decides, it should not do so under the apprehension that it is constrained to only approving one stipulation or the other. The Commission’s authority is much broader than that. Both stipulations are merely lists of menu items, from which the Commission may adopt parts depending on what it decides is supported in the record and is most likely to achieve the goals of MEEIA. More than anything else, the Commission should approve a Plan that provides a reliable path forward for identifying additional cost-effective savings and properly incenting Ameren Missouri to achieve it.

Respectfully Submitted,

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¹⁷ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and electronically mailed to all counsel of record on this 26th day of August, 2015.

/s/ Andrew J. Linhares _____

Andrew J. Linhares