

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union Electric Company            )  
d/b/a Ameren Missouri’s Energy Efficiency                                    )    File No. ER-2015-0132  
Investment Charge Rider.    )

**AMEREN MISSOURI’S REPLY IN OPPOSITION TO  
PUBLIC COUNSEL’S REQUEST FOR ADDITIONAL TIME TO  
RESPOND TO STAFF’S RECOMMENDATION AND  
MOTION TO SUSPEND TARIFF SHEET**

In accordance with the Commission’s December 30, 2014, *Order Directing Filing*, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “the Company”) replies in opposition to *Public Counsel’s Response to Order* (“Response”), filed January 5, 2015. Public Counsel’s Response requests additional time to respond to the *Staff Recommendation to Approve Tariff Sheets* (“Staff Recommendation”), filed December 19, 2014, and also moves the Commission for an order suspending tariff sheets Ameren Missouri filed as part of its November 21, 2014, application for adjustment of the Company’s Energy Efficiency Investment Charge Rider. This reply shows the Office of the Public Counsel (“Public Counsel”) Response fails to establish good cause – or any cause at all – for its request for additional time. This reply also shows Public Counsel’s motion to suspend Ameren Missouri’s tariff sheets is without merit and should be denied for at least two reasons. First, the Commission’s rule governing demand-side program investment mechanism (“DSIM”) tariff filings does not provide for tariff suspensions. Second, the rate adjustments the tariff proposes are interim in nature, and are subject to future true-up and prudence reviews that will ensure customers do not overpay energy efficiency program costs the tariff seeks to recover. But even if the Commission could suspend the tariff sheets, no good reason exists to do so because, as noted in the Staff Recommendation, those sheets fully comply with the Commission’s rule governing such filings, the provisions of Ameren Missouri’s Rider EEIC tariff, and the July 5, 2012, *Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing* (“2012 Stipulation”), which Public Counsel agreed to as a signatory.

## **BACKGROUND OF AMEREN MISSOURI'S RIDER EEIC**

1. The Missouri Energy Efficiency Investment Act (“MEEIA”), §393.1075, RSMo, grants the Commission broad authority to develop cost-recovery mechanisms that encourage demand-side investments and ensure timely recovery of utilities’ costs to promote energy efficiency. As interpreted by the Missouri Court of Appeals in *State ex rel. Public Counsel v. Public Service Comm’n*, 397 S.W.3d 441 (2013) (*rehearing and/or transfer denied*), that authority includes the power to adopt rules and approve tariffs providing for rate adjustments between general rate cases. *Id.* at 450.

2. Commission rules implementing MEEIA include 4 CSR 240-20.093, which allows utilities to establish demand-side program investment mechanisms (“DSIM”) that both promote demand-side investment and provide timely recovery of program costs and incentives. Section (2) of that rule specifies the types of costs utilities can recover through an approved DSIM tariff, and Section (4) prescribes the process utilities and other interested stakeholders must follow to periodically adjust DSIM rates. To ensure timely recovery of program costs, Section (4) specifically provides for prompt Staff analysis and examination of DSIM rate adjustment filings, and requires Staff to submit its recommendations within thirty days after a utility files tariff sheets to adjust DSIM rates. If Staff concludes the proposed adjustment complies with applicable rules and the requirements of MEEIA, the rule states “the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed.” 4 CSR 240-20.093(4).

3. But the Commission’s rule does not vest Staff with sole authority or responsibility to review proposed adjustments to DSIM rates. Under 4 CSR 240-20.093(4)(D), Public Counsel and other interested parties also are obligated to review such filings. And if Public Counsel or any other party believes a proposed adjustment does not comply with 4 CSR 240-3.163(8), the rule requires that party to notify the utility within ten days and to seek clarification or additional information.

4. In July 2012, the parties to File No. EO-2012-0142, the docket created to consider Ameren Missouri’s initial MEEIA compliance filing, entered into the 2012 Stipulation. Public Counsel was a signatory, and, as its title suggests, the 2012 Stipulation comprehensively resolved all issues related to the

Company's filing, including the parties' agreement "the Commission should approve the DSIM described in [Ameren Missouri's] MEEIA Report, after being modified as set forth in this paragraph, paragraph 7 and paragraph 7, including all their subparts."<sup>1</sup> The Commission approved the 2012 Stipulation in an order dated August 1, 2012, effective ten days thereafter.

5. Because the Missouri Court of Appeals had not yet issued its decision in *Public Counsel, supra*, the DSIM described in the Company's MEEIA Report and adopted as part of the 2012 Stipulation did not provide for DSIM-related rate adjustments between general rate cases. Instead, ninety percent of projected program costs would be included in base rates set in Ameren Missouri's next general rate case, with any differences between that projection and actual program costs to be tracked for recovery through a Commission-approved amortization in a future rate case.<sup>2</sup> But the 2012 Stipulation acknowledged this means for recovering program costs was intended to be temporary pending the court's decision in *Public Counsel*, and the parties specifically agreed to cooperate in the creating a tariff rider that would allow for periodic collection of program costs between general rate cases if the court concluded such a rider was lawful.<sup>3</sup>

6. Following the court's ruling in *Public Counsel*, on November 20, 2012, Ameren Missouri filed a tariff rider to allow the Company to recover MEEIA program costs between rate cases ("Rider EEIC"). The Commission subsequently approved Rider EEIC, and it took effect January 27, 2014. In its January 3, 2014, *Order Approving Tariff and Requested Variances* in File No. EO-2014-0075, the Commission acknowledged the genesis of the rider when its stated "[t]he tariff implements a provision in a stipulation and agreement approved by the Commission in File No. EO-2012-0142." The docket sheet in EFIS for File No. EO-2014-0075 does not show any party – including Public Counsel – made a filing opposing either the Company's tariff or Staff's recommendation to the Commission that it approve the tariff as filed.

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<sup>1</sup> 2012 Stipulation, ¶5.

<sup>2</sup> *Id.*, ¶6.

<sup>3</sup> *Id.*, ¶7.

## PUBLIC COUNSEL'S REQUEST FOR ADDITIONAL TIME

7. As noted in paragraph 2 of this reply, 4 CSR 240-20.093(4) prescribes the process utilities and other interested parties must follow for filing and responding to periodic adjustments of DSIM rates. Despite this fact, Public Counsel bases its request for additional time to respond to Staff's Recommendation on language in 4 CSR 240-2.080(13), which is a rule of practice and procedure that states parties have ten days to respond to any pleading unless otherwise ordered by the Commission. Public Counsel's reliance on 4 CSR 240-2.080(13) is misplaced for several reasons. For one thing, under Missouri law where a general rule appears to be in conflict with a more specific rule, the more specific rule prevails.<sup>4</sup> That means 4 CSR 240-20.093(4), a rule that specifically prescribes the processes and procedures parties must follow to file and respond to DSIM rate adjustments, takes precedence over 4 CSR 240-2.080, which is a general rule of practice and procedure. Public Counsel's argument also incorrectly assumes its responsibilities to review and raise concerns about Ameren Missouri's DSIM rate adjustment filing began on December 19, 2014, the date of the Staff Recommendation. That assumption is incorrect, because 4 CSR 240-20.093(4)(D) specifically requires Public Counsel – and any other party who believes a utility's DSIM filing does not comply with applicable rules – to both notify the utility within ten days of the filing and seek clarification or additional information. Ameren Missouri filed its proposed DSIM rate adjustment on November 21, 2014; consequently, Public Counsel's argument that "the holiday time frame" left it only five business days to respond to that filing is patently false. Under the Commission's rule, Public Counsel was obligated to review the Company's filing and raise questions or concerns about that filing by December 1, 2014, well before the holiday season. Despite this clear requirement of 4 CSR 240-20.093(4)(D), Public Counsel's Response neither acknowledges its obligations nor offers any "good cause" explanation why it failed to fulfill those obligations.

8. Beyond the failures and deficiencies described in the preceding paragraph, Public Counsel's Response also fails to establish any objective basis upon which the Commission can base a finding of "good cause" sufficient to grant the request for additional time. Although paragraph 13 of the Response

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<sup>4</sup> *State ex rel. Office of the Public Counsel v. Public Service Comm'n*, 301 S.W.3d 556, 565 (Mo. App. 2009).

alleges Staff's Recommendation "raised new questions for Public Counsel that must be answered," Public Counsel's pleading does not identify those questions or even provide clues as to what they may be. Ameren Missouri suspects the reason for this is a review of the Company's tariff filing and the terms of Rider EEIC strongly suggests Public Counsel has no "new questions," which would make its request for additional time unfounded and without merit.

9. Ameren Missouri's Rider EEIC specifically identifies costs and charges the Company can pass through to its customers:

Charges passed through this Rider EEIC reflect the charges approved to be collected from the implementation of the MEEIA Cycle 1 Plan. Those charges include: 1) projected Program Costs, projected Ameren Missouri's TD-NSB Share and Performance Incentive Award (if any) for each Effective Period, 2) Reconciliations, with interest, to true-up for differences between the revenues billed under this Rider EEIC and total actual monthly amounts for: i) Program Costs incurred, ii) Ameren Missouri's TD-NSB Share incurred, and iii) amortization of any Performance Incentive Award ordered by the Missouri Public Service Commission (Commission) and 3) any Ordered Adjustments.

Rider EEIC also sets out the formula for determining the Energy Efficiency Investment Rate that is the basis for each of DSIM rate adjustment, and also defines each of the elements of that formula. The Company's filing includes all the elements required by Rider EEIC: the current MEEIA rate, which was established in Ameren Missouri's last general rate case; the proposed MEEIA rate; and workpapers showing how the proposed rate was determined using the rate adjustment formula. Staff reviewed all this information and confirmed it is consistent with Rider EEIC, the Commission's rules, and the 2012 Stipulation. Based on those findings, Staff recommended the Commission issue an order approving the DSIM rate adjustment as proposed in the Company's tariff sheets. Given the tight constraints and specific requirements of Rider EEIC and the Commission's rules, it is difficult to conceive how any of the information provided by Ameren Missouri, or the findings stated in Staff's Recommendation, could raise any "new questions" as Public Counsel alleges.

10. Public Counsel alleges it "diligently issued" data requests on December 23, 2014, and argues it should be given more time because answers to those requests were not yet due.<sup>5</sup> But the claim of

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<sup>5</sup> Public Counsel's Response, ¶13.

“diligence” rings hollow when considered in light of 4 CSR 240-20.093(4)(D), which requires Public Counsel to make such requests within ten days of the date Ameren Missouri made its DSIM rate adjustment filing. The fact Public Counsel failed to ask for additional information within the timeframe prescribed in the rule is the antithesis of “diligence,” and also strongly suggests no “good cause” exists to grant the request for additional time.

### **PUBLIC COUNSEL’S REQUEST TO SUSPEND AMEREN MISSOURI’S TARIFF SHEETS**

11. Public Counsel also asks the Commission to exercise its authority under §393.150, RSMo, to suspend Ameren Missouri’s DSIM rate adjustment tariff on grounds such action is necessary “[t]o preserve the status quo and permit the parties and the Commission a full and fair opportunity to evaluate the merit of Ameren’s proposed tariff sheets, including a hearing before the Commission, if necessary . . .”<sup>6</sup> Specifically, Public Counsel seeks to suspend the tariff for at least sixty days beyond its proposed January 27, 2015, effective date, although the pleading suggests Public Counsel does not know how much additional time will be necessary to allow it to complete whatever review it intends to conduct.

12. There are several reasons why Public Counsel’s motion should be denied. The most compelling reason is 4 CSR 240-20.093(4) does not provide for suspension of a DSIM rate adjustment tariff. That rule is very specific as to what the Commission must do following the filing of such a tariff and the submission of Staff’s recommendation:

If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1050, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are not in accordance with the provisions of this rule, section 393.1050, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall reject the proposed tariff sheets within sixty (60) days of the electric utility’s filing and may instead order the filing of interim tariff sheets that implement its decision and approval.

Under the terms of the rule, the Commission has only two options: accept the DSIM tariff sheets as filed or reject them and order the utility to file tariff sheets that comply with the Commission’s decision

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<sup>6</sup> Public Counsel’s Response, ¶16.

regarding the filing. Nothing in the rule authorizes the Commission to suspend the tariff sheets, as Public Counsel requests.

13. Public Counsel argues the rule “contains provisions enabling the Commission to suspend or extend the sixty (60)-day timeline for tariff approval set forth in that rule.”<sup>7</sup> But that argument ignores the plain and unambiguous language of the rule itself. As noted in the preceding paragraph, the rule allows the Commission two options and only two options. And while the second option allows the Commission to reject rate adjustment tariff sheets not filed in accordance with MEEIA, the Commission’s rules, or the approved DSIM tariff, it does not allow suspension of the tariff for further consideration or review. Instead, the rule contemplates the Commission will issue an order that identifies deficiencies in the tariff sheets so the utility can correct those deficiencies and quickly file complying tariff sheets.

14. The Staff Recommendation the Commission issue an order approving the DSIM rate adjustment tariff sheets clearly shows Staff believes Ameren Missouri’s filing complies with MEEIA, the Commission’s rules, and the Company’s approved DSIM tariff. Indeed, Public Counsel’s motion does not allege the tariff sheets do not comply with those requirements. Consequently, because neither Staff nor Public Counsel has alleged Ameren Missouri’s filing fails to comply with applicable requirements, there is no basis under 4 CSR 240-20.093(4)(D) to reject the tariff sheets. Therefore, under the terms of its own rule the Commission is obligated to issue an order approving the tariff sheets effective January 27, 2015.

15. In addition, it appears Public Counsel’s motion to suspend the tariff sheets is a collateral attack on 4 CSR 240-20.093(4)(D). If Public Counsel believed the rule should include an option for the Commission to suspend DSIM rate adjustment filings, the time to address that issue was during rulemaking or in a timely challenge to the rule under §386.510, RSMo. But the time to pursue either of those options has long passed, which means Public Counsel cannot not now make – and the Commission cannot entertain – what amounts to a request to revise and reform the rule to suit Public Counsel’s current needs. *See, Atmos Energy Corp. v. Public Service Comm’n*, 103 S.W.3d 759, 758 (Mo. 2003)(*rehearing denied*).

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<sup>7</sup> Public Counsel’s Response, ¶18.

16. There is good reason why 4 CSR 240-20.093(4)(D) does not provide for suspension of DSIM rate adjustment tariff sheets or for evidentiary hearings. Section 393.150, RSMo, allows for tariff suspensions of up to eleven months and also for evidentiary hearings to accommodate tariff filings for *permanent* changes to rates. But DSIM rate adjustments are not permanent rate changes; instead, they are just *interim* rate changes. Because permanent rates are final, there is a need for great care, careful analysis, and, more often than not, evidentiary hearings before the Commission can be sure the rates it approves are fair and reasonable. Once set, the Commission cannot retroactively change rates because its estimates of expenses were too high or too low. But those same concerns and considerations do not apply to interim rates, which are temporary and can be adjusted by the Commission to correct estimation errors or if costs recovered through such rates are later determined to have been imprudently incurred. Safeguards applicable to interim rates, which make suspension of those rates and evidentiary hearings unnecessary, are described in direct testimony filed in this case by Ameren Missouri witness William R. Davis:

Ameren Missouri's Rider EEIC and the Commission's rules provide two mechanisms to ensure that amounts collected from customers do not exceed Ameren Missouri's actual, prudently-incurred energy efficiency costs. First, Rider EEIC and the Commission's rules require a true-up of the amounts collected from customers through Rider EEIC, with any excess amounts that are collected to be credited to customers through prospective adjustments to the Rider EEIC calculation, with interest at Ameren Missouri's short-term borrowing rate. Second, Ameren Missouri's energy efficiency costs are subject to periodic prudence reviews to ensure that only prudently-incurred net energy costs are collected from customers through Ameren Missouri's Rider EEIC. These two mechanisms serve as checks to ensure that the Company's customers pay only the actual, prudently-incurred energy efficiency costs and nothing more.<sup>8</sup>

Because of these safeguards, neither the Commission nor Public Counsel need be concerned 4 CSR 240-20.093(4) does not include an option to suspend and hold evidentiary hearings concerning proposed DSIM rate adjustments. Similar to the way these same features protect customers from overcharges or imprudent expenditures by utilities with approved fuel adjustment clauses, the true-up and prudence review features of rules governing DSIM ensure only actual program costs will be collected from

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<sup>8</sup> Direct Testimony of William R. Davis, File No. ER-2015-0132, (November 21, 2014), p. 4, line 15 through p. 5, line 4.



customers. For example, true-up reviews will make sure Ameren Missouri only collects from customers the actual amounts of program expenses it incurs. And prudence reviews, prescribed in 4 CSR 240-20.093(10), provide an additional layer of customer protection by ensuring all program costs were prudently incurred. To accomplish this the prudence review process involves an audit by Staff – and also by Public Counsel and other interested parties if they choose to participate – the opportunity for those parties to conduct discovery, and also the opportunity for evidentiary hearings to fully vet questions regarding the prudence of any MEEIA-related program costs. If, at the conclusion of the prudence review, the Commission determines any program cost recovered from customers was not prudently incurred, it will order refunds of those costs to customers, with interest. Thus, the DSIM rate adjustment and review process established by 4 CSR 240-20.093 fully protects both the utility and its customers from over-or under-recovery of MEEIA- related program costs, and does so without the need for suspension of tariff sheets implementing interim DSIM rate adjustments.

WHEREFORE, for all the reasons stated in this reply, the Commission should issue an order (i) denying Public Counsel’s request for additional time to respond to the Staff Recommendation; (ii) denying Public Counsel’s motion to suspend Ameren Missouri’s DSIM rate adjustment tariff sheets; and (iii) granting the Company such other relief as the Commission may deem appropriate.

Respectfully submitted,

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**ATTORNEYS FOR UNION ELECTRIC  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 9, 2015, a copy of the foregoing was served via e-mail on all parties of record in File No. ER-2015-0132.

**/s/L. Russell Mitten**