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.	))))	**Case No. EO-2015-0055**

POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

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COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and presents its post-hearing brief as follows:

I. Introduction

"We've come three years down the MEEIA road and we're at another crossroads." (John Rogers, Tr. Vol. 3, p. 777). The parties have presented the Commission with two competing stipulations and agreements, the company's *Non-unanimous Stipulation and Agreement* filed June 30, 2015 ("Ameren stipulation" or "utility stipulation") and the *Amended Non-unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2*, filed on July 8, 2015 ("non-utility stipulation") (Doc. Nos. 100 and 119).

The utility stipulation presents the Commission with a plan that is too expensive, contains artificially low energy savings targets, and places too much risk on ratepayers. It creates an energy efficiency portfolio based on a flawed market potential study that understates the achievable energy savings in Ameren's service territory. The utility stipulation's proposal to address the low energy savings targets is simply a promise from Ameren that it will work with stakeholders to identify possible program enhancements that may increase the energy savings targets for 2017 and 2018. This method has not worked in the past and will serve to increase disputes among the parties. Additionally, the utility stipulation increases the energy savings target from the company's initial application by improperly including a CFL program and a

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Public Buildings program. These modifications do not create more energy efficiency savings; they only allow Ameren to take credit for energy savings that would have occurred naturally.

In total, the utility stipulation will cost ratepayers approximately $303.9 million. To achieve the low energy savings target, the utility stipulation provides Ameren with a bloated budget of $197 million. Then, the utility stipulation adds a throughput disincentive cost recovery component similar in operation to the one used in Cycle 1 – but far more lucrative to the company. Under *every* scenario presented to the Commission in this case, Ameren Missouri has over-collected through the use of a similar throughput mechanism in Cycle 1. Using Staff's calculation, Ameren over-collected $29,429,712 through its throughput disincentive component for years 2013 and 2014.[1] (Ex. 710, pp. 17-18). Now, in Cycle 2, the company seeks an even larger share of the net benefits. Next, the utility stipulation contains a kWh performance incentive that begins to reward the company when it reaches only 70% of its artificially low savings target, meaning, Ameren would get a reward for underperforming. For this cost component, too, Ameren seeks to collect a drastically increased portion of the net benefits. Worse, the terms of the utility stipulation unlawfully disregard and distort evaluation, measurement, and verification ("EM&V") for the throughput disincentive cost component and the performance incentive cost component. As a consequence, under the utility stipulation, ratepayers will pay Ameren for energy savings that never actually occur.

To paraphrase a recent opinion by Chief Justice Roberts, should the Commission adopt the terms of the utility stipulation and agreement, the signatories will celebrate the decision. By all means those signatories should celebrate. But those signatories should *not* celebrate energy

[1] $24,856,077 + $4,573,635.

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efficiency. The utility stipulation and agreement has *nothing* to do with energy efficiency. Far from advancing energy efficiency in a meaningful way, the utility stipulation seeks to repeat and continue the mistakes of Ameren's Cycle 1 MEEIA portfolio. In so doing, the terms of the utility stipulation generously give Ameren another revenue stream – one more lucrative than the flawed Cycle 1 mechanism, through which Ameren over-collected millions of dollars – and fails to enhance ratepayers' incentives to use energy more efficiently. The many flaws in the utility stipulation do more harm to ratepayers than good.

In contrast, the non-utility stipulation provides the Commission with a comprehensive solution to resolve this case and corrects the flaws present in the company's proposal. It provides a practical way to resolve the disputes among stakeholders regarding the market potential study and energy savings targets. It includes additional programs to enable small businesses and multi-family low income customers to participate in, and benefit from, energy efficiency. Importantly, the utility stipulation outlines an alternative cost recovery mechanism that balances the interests of the company and ratepayers. The throughput disincentive cost recovery component will remove the company's disincentive to pursuing energy efficiency by compensating it for the value of the energy it sells on an incurred basis. Rather than one performance incentive, the non-utility stipulation provides a demand-related incentive, a customer participation related incentive, and includes the possibility for a kWh incentive related to increases to the energy savings target for 2017 and 2018. These incentives are designed to incent Ameren to increase customer participation and pursue programs that will benefit all ratepayers whether or not they are program participants. Of course, recovery under any of the cost recovery components is based on rewarding the company for measured and verified energy savings as required by the law.

The non-utility stipulation is a better alternative that accomplishes the goals of MEEIA, protects ratepayers, pursues cost-effective energy efficiency, and provides the company an opportunity to earn tens of millions of dollars.

II. Utility Stipulation is flawed

A. Ameren's energy savings targets are artificially low

Ameren Missouri's proposal generously addresses the utility's financial incentives, but fails to incent customers to use energy more efficiently. Rather than establishing meaningful energy savings targets that would require the company to create actual energy savings, the utility stipulation sets artificially low targets and provides a "reward" for reaching only 70% of that low target. Even in setting the energy savings targets, the company proposal is not about energy efficiency, it is about money. Setting a low energy savings target all but ensures that the company will exceed the target and capture an inflated performance incentive.

In order to establish energy efficiency savings targets, the company must determine the level of possible energy savings in the service territory. To identify the universe of available energy savings that can be achieved, a market potential study is conducted. The Commission's rules define a utility market potential study to mean an "evaluation and report by an independent third party of the energy savings and demand savings available in a utility's service territory broken down by customer class and major end-uses within each customer class." Commission Rule 4 CSR 240-20.093(1)(GG). Naturally, this market potential study should set the upper limit of the available energy savings.

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For its Cycle 2 application, Ameren Missouri's market potential study was performed by the Utility Solutions Consulting Services group of EnerNOC, Inc (Ex. 111, p. 2).[2] The market potential study has been a point of contention with several parties questioning the level of energy savings available and the methodology used to reach those estimates. Compared with Ameren's performance in its MEEIA Cycle 1 the projected available energy savings for Cycle 2 reflect a significant decline.

In its MEEIA Cycle 1, Ameren had an energy savings target of 793,102 MWh (Ex. 800 HC, p. 4). Through two years, EM&V has credited Ameren with 692,086 MWh of energy savings (Ex. 803, p. 4). Ameren is on pace to significantly exceed the energy savings target for the full three-year cycle. Yet, Ameren's Cycle 2 application set an energy savings target of only 426,382 MWh (*Id.* at 5). A table from the testimony of Dr. Marke, shown below, compares the differences between program costs, energy savings targets, and program dollar per MWh of energy savings between the company's Cycle 1 targets and the Cycle 2 application.

Table 1: MWh costs per targeted savings comparison between Ameren Missouri Cycle I and Cycle II applications

	3-year initially proposed budget target	3-year initially proposed energy target	Program $ per MWh saved
Ameren Missouri 2013-2015	$145,293,213	793,102 MWh	$183.20
Ameren Missouri 2016-2018	$134,461,396	426,382 MWh	$315.35

(Ex. 800 HC, p. 4). However, Ameren has entered into a stipulation with certain parties that increases the savings target to 583,563 MWh (*Non-unanimous Stipulation and agreement*, File

[2] The team that conducted the Ameren Missouri market potential study is now a part of Applied Energy Group.

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No. 100). This number is an increase from the company's initial application, and is slightly higher than the company's market potential study showed was available (Ex. 803, p. 7). Below is a table comparing the potential study energy savings to the utility stipulation's energy savings target.

	Program Costs	MEEIA Savings
Potential Study RAP (2016-18)	$187 million	539,000 MWh
Utility Stipulation	$197 m (+5%)	583,563 (+8%)

(*Id*.). However, the Commission should note that the available potential energy savings in the market potential study were improperly adjusted downward (Ex. 803, pp. 6-7). Additionally, the utility stipulation proposes to include energy savings already included in the achievable potential from Cycle I (*Id*. at 7). The consequence is that Ameren Missouri is not increasing its savings target as much as it appears at first glance (*Id*.).

1. The market potential study energy savings were improperly adjusted downward

The MEEIA statute establishes that a MEEIA program should have a "goal of achieving all cost-effective demand-side savings." Mo. Rev. Stat. § 393.1075.4. Several parties offered testimony that utility stipulation energy savings target was too low and the company was not achieving all cost-effective energy savings. To understand why Ameren Missouri is projecting such smaller energy and demand savings it is important to understand the methodological approach to Ameren Missouri's 2013 Market Potential Study that provided the basis for the saving targets that are being proposed by the company (Ex. 800 HC, p. 9).

Despite criticism from multiple parties, the company's witness Ms. Rohmund describes Ameren's market potential study as "best in class." (Ex. 111, p. 29). How did a "best-in-class"

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market potential study produce an energy savings target lower than other parties would expect? In part, because the results of the primary data was modified based on the results of a study conducted by YouGov Definitive Insights ("YouGov study") (Ex. 111, pp. 17-18). This adjustment to the primary data was made purportedly to "account for inherent response bias embedded in the survey results." (*Id*.). The YouGov market research data was applied to the primary research data to reach Ameren Missouri's projected energy and demand saving targets for the MEEIA Cycle 2 (Ex. 800 HC, pp. 10-11). Importantly, the YouGov adjustment ultimately had the impact of lowering the energy savings target. This adjustment increases the potential for ratepayers to overcompensate Ameren Missouri for any energy efficiency actions that take place in Cycle 2 (Ex. 800 HC, p. 17).

What was the YouGov study? Ms. Rohmund, who filed testimony in support of the market potential study and YouGov adjustment, testified that the study "…was for utility programs…and it asked consumers what their intentions were with respect to replacing their appliances and equipment…and then it tracked those same respondents through the same period…to observe what they actually did." (Tr. Vol. 1, p. 178). Ms. Rohmund's description sounds compelling, but her familiarity with the YouGov Study does not withstand closer scrutiny. During the hearing, Ms. Rohmund's responses to questions on the YouGov study exposed her limited knowledge about the details of the YouGov study.

> **Q (Mr. Opitz). Can you tell me what products were screened in that study?**
> A (Ms. Rohmund). I don't recall the details of that.
>
> **Q. Can you tell me what the demographics of the customers that were surveyed?**
> A. I cannot do that.
>
> **Q. Do you know the manner in which the surveys were conducted for that study?**
> A. I don't know the details.

Q. Do you know if they were asked about energy efficiency products?
A. My understanding is that they were asked about utility products, yes.

Q. Do you know if there were -- they were asked about products that are not energy efficiency products?
A. I do not.

Q. Do you know if the survey included commercial and industrial customers?
A. No, I don't.

Q. Do you know if the results of the study varied depending on the product that the customers were asked about?
A. I don't know definitively.

(Tr. Vol. 1, p. 178-179). Ms. Rohmund further testified that she did not know if the YouGov study was substantiated by any researchers or institutions (*Id*. at 180). Despite her uncertainty about a major adjustment to the potential study, Ms. Rohmund offered pre-filed testimony that the market potential study was designed to adhere to NAPEE guidelines (Ex. 111, p. 19). Although such a bold statement sounds impressive, this assertion is meaningless when one considers that Ms. Rohmund clarified during the hearing that the NAPEE guidelines do not talk about estimating participation rates from customer surveys or otherwise adjusting participation rates (Tr. Vol. 1, p. 181).

The market potential study should not have been adjusted using the YouGov study. Dr. Marke testified that it is inappropriate to substitute or alter primary data collected from Ameren Missouri customers with an opaque, non-peer reviewed, unsubstantiated 5-page write-up from 2010 on customers without demographic information, and without knowledge of the products or services that are being examined (Ex. 800 HC, p. 17). National Resources Defense Council ("NRDC") witness Mr. Phil Mosenthal, testified that he has conducted market potential studies on behalf of utilities, government entities, and other intervenors (Tr. Vol. 3, p. 682). Mr. Mosenthal's experience with market potential studies is reflected in his election by the EPA to be

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the primary author of the EPA's guide to conducting energy efficiency potential studies for the national action plan (Tr. Vol. 3, pp. 683-84). During the hearing, Mr. Mosenthal testified that adjusting the market potential study in this case based on the YouGov study was not appropriate (Tr. Vol. 3, pp. 683-684). Mr. Mosenthal's pre-filed testimony was that the potential study's savings estimates were unreasonably low but that Ameren's proposed energy savings (in its initial application) were even lower (Ex. 301, p. 9). Specifically, Mr. Mosenthal testified that a significant contributor to the low potential estimate was the approach for estimating "take rates." (Ex. 301, pp. 15-16). The YouGov adjustment was applied to "take rates." (Ex. 111, pp. 17-18). Take rates are the maximum rates at which cost-effective energy efficiency measures will be adopted by the public (*Id*.). Mr. Mosenthal testified that the numbers used in the Ameren market potential study were well below program participation rates in a recent study that examined "take rates" throughout the country (*Id*.). The Ameren market potential study used low "take rates" to underestimate the potential, thereby finding less energy savings potential than other studies performed in the Midwest and less energy savings potential than Ameren is currently achieving in Cycle 1 (Ex. 301, p. 26).

Sierra Club Witness Mr. Woolf, a former Commissioner from the Massachusetts Department of Public Utilities, also testified that using the YouGov study was inappropriate (Tr. Vol. 2, p. 404). Mr. Woolf testified that the efficiency savings proposed in the Cycle 2 plan are low and that "in each of its efficiency analyses, especially the Potential Study and the 2014 IRP, Ameren makes several assumptions, modifications and adjustments that chip away at the efficiency potential until the remaining savings that are deemed to be realistic and cost-effective are a small fraction of the original estimates." (Ex. 1200, p. 17). Mr. Woolf specifically noted that Ameren applied a downward adjustment to the potential energy savings, "ranging from 56 to

62 percent for residential customers, and 72 to 83 percent for business customers (Ex. 1200, p. 26). This adjustment was associated with the YouGov adjustment. That adjustment "eliminates a significant portion of savings from what is considered realistic." (*Id*.).

Tacitly acknowledging that its market potential study contained artificially low energy savings, Ameren now supports the utility stipulation's slightly higher energy savings target. That slight increase is associated with flawed program design and should be viewed with a critical eye.

B. The utility stipulation's plan to address low energy savings target from a flawed market potential study

It is true that the utility stipulation contains slightly higher energy savings targets than the company's initial application. The increase occurs, in part, because the company improperly includes a CFL lighting program and a Public Buildings program. Taking into account the entire energy savings target increase, even the signatories testified that the target was still low. In addition, the utility stipulation does not provide a path to increase the energy savings targets in Cycle 2.

The utility stipulation includes several programs that make up the increase to the energy savings targets. Some of those new inclusions, such as the Small Business Direct Installation program and the Low Income Multifamily program are appropriate. Those programs are also included in the non-utility stipulation (*See* Doc. No. 119). The other programs added to the utility stipulation, described below, do not further energy efficiency or benefit ratepayers, and so, should not be included.

First, the utility stipulation proposes to include CFL light bulbs to the Cycle 2 portfolio (Ex. 803, p.15). CFL lighting featured prominently in Ameren's MEEIA Cycle 1 portfolio, but

should not be included again in Cycle 2. Ameren Missouri's most recent residential lighting EM&V report includes the results of a shelf study that provides primary data to support the position that promoting CFL measures is inappropriate in Ameren's service territory (Ex. 803, p. 16.).

Table 5: 2014 Percent of Stores with a Minimum of 10 Incandescent Bulbs: Comparison with Concurrent Midwestern Utility EISA Shelf Study

Measure	Q1*		Q2		Q3		Q4	
	Ameren	Other	Ameren	Other	Ameren	Other	Ameren	Other
100W Equivalent CFL	10%	10%	11%	2%	2%	3%	4%	1%
75W Equivalent CFL	19%	19%	21%	2%	5%	3%	4%	4%
60W Equivalent CFL	77%	77%	71%	61%	59%	50%	51%	34%
40W Equivalent CFL	66%	66%	65%	56%	41%	20%	44%	15%
60W Equivalent LED**	3%	n/a	3%	n/a	12%	n/a	26%	n/a

*Q1 values borrowed from comparable mid-west utility program conducting a similar study.

**Q1 LED value uses the Q2 LED value

(*Id*.) The table shows that in each quarter of 2014, there has been a decrease of roughly 10% in the available shelf space provided for incandescent light bulbs (*Id*. at 17). Since this data is for 2014, an additional year of incandescent bulbs not being replaced on the shelf by other incandescent bulbs would further reduce the need for a utility sponsored CFL program because people will be purchasing more efficient bulbs even absent an Ameren program (*Id*.). Additionally, Ameren and the independent third-party evaluator have claimed market transformation of the Ameren Missouri service territory in both 2013 and 2014 (*Id*.). Essentially, Ameren has claimed that its programs in Cycle 1 fundamentally altered the service territory so that lighting vendors will no longer carry incandescent light bulbs because of the program (*Id*.). If the market for CFL's has already been transformed, then including a CFL program in Cycle 2 does not create any more energy efficiency savings than what would have occurred absent the program. The Commission's independent auditor's 2014 report stated:

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> The current calculations for lighting market effects and spillover assume that residential efficient bulb saturation increased by approximately 11 percent (Lighting Program Report, 2014, p. 4). This would place Ameren Missouri above states such as California and Massachusetts in terms of efficient lighting bulb saturation, an assumption that would need to be verified with field data collection before savings could be claimed for these impacts.

(Ex. 803, p. 17). With the lighting market transformed, to continue to rebate CFLs at the expense of more efficient and cost-effective technology, such as LED light bulbs, would be inappropriate (Ex. 803, p. 18). In fact, Ameren Missouri's initial application did not include a CFL lighting program – the company recognized the market changed. The company's movement away from its original position is nothing more than a concession to appease unsupported suppositions of one signatory to the utility stipulation and will not actually cause an increase in energy efficiency savings (*Id*.). The inclusion of a CFL program serves only to give Ameren more ratepayer money for little-to-no increase in energy efficiency savings and should be disregarded.

A second improper addition to the utility stipulation is the inclusion of language related to public buildings. Specifically, Ameren Missouri is proposing to give itself the opportunity to claim energy savings that are not attributable to Ameren's MEEIA program. According to the utility stipulation:

> The Signatories agree that public facilities (state and federal) are eligible for program participation, and agree that executive orders or statutes that target, require, or mandate a defined reduction of energy for a public facility shall not be used to classify a project associated with a public facility as a "Free Rider." The target energy savings for public facilities will equal 25,000 MWh. The target budget for public facilities will equal $7.3 million.

(*Non-unanimous Stipulation and agreement,* File No. 100, p. 8, par. 11). If public buildings are mandated to increase their energy efficiency, then these buildings' energy efficiency will increase regardless of whether or not Ameren Missouri offers financial assistance (Ex. 803, pp. 18-19). If the energy efficiency would have occurred absent the Ameren's program, then the

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public buildings are by definition "freeriders" and Ameren did not cause the energy savings (*Id.*). Ameren's attempt to be compensated for energy savings that occur without the company's intervention highlights the importance of a robust EM&V and auditing process to ensure ratepayer funds are spent only on those savings attributable to Ameren. The company should focus on actually causing energy efficiency, rather than trying to illegally and wrongly take credit for energy savings occur due to the efforts of others.

Particularly disconcerting is the company's apparent position that *ratepayers* should pay more through a MEEIA charge to make it up to the utility for purported "unfunded mandates" from the government. Counsel for Ameren Missouri had the following exchange with Ameren witness Mr. Laurent regarding energy savings from public buildings.

> **Q (Mr. Mitten). So the record is clear, there is a certain amount of energy savings that is mandated for government agencies; is that correct?**
> A (Mr. Laurent). Well, it could be. I mean it depends upon what the federal and state entities mandate.
>
> **Q. Are you familiar with the term "unfunded mandate?"**
> A. I understand what that - - that - - that means in principle.
>
> **Q. Well, just because an energy standard is mandated, does that mean that the governmental entity has the money that's necessary to meet that standard?**
> A. After talking to, you know, the regulatory stakeholders, I believe that that is not the case. I mean just because there's a standard does not necessarily mean there's a budget there to implement it.

(Tr. Vol. 2, p. 341). Charges on customers' electric bills should be for that public utility service. There is no evidence in the record of any unfunded mandates that Ameren would seek to remedy; however, to the extent that there are mandates – unfunded or otherwise – requiring public buildings to improve energy efficiency, it not the responsibility of captive ratepayers to bear any of that cost, nor does the MEEIA statute permit as much.

Ameren's low energy savings target does not further energy efficiency. Neither does adding a CFL lighting program or public buildings program to Cycle 2. The market potential study was flawed and the energy savings targets for Cycle 2 are artificially low. The terms of the utility stipulation do not meaningfully remedy those deficiencies. If the Company is compensated for achieving cost-effective energy efficiency savings, why did Ameren set low targets? The best explanation is that Ameren's proposal has nothing to do with energy efficiency – it has to do with money.

C. The utility stipulation does not provide a path to increase the energy savings targets in Cycle 2

The utility stipulation does little to resolve the disputes between stakeholders regarding the energy savings targets and the market potential study. Nor does the utility stipulation increase the energy savings target to the levels that several signatories believe is achievable. Nor does it provide any requirement or incentive for Ameren to pursue additional energy savings. All that the agreement in the utility stipulation does ensure is future disputes between stakeholders.

In exchange for giving Ameren increased shares of both the throughput disincentive component and the performance incentive component, the signatories to the utility stipulation got Ameren to "agree to work together to identify additional cost-effective energy savings strategies to be implemented for program years 2017 and 2018." (Doc. No. 100). The company also agreed to "work together and determine the feasibility of implementing additional energy savings." (*Id*.) In other words, the signatories to the non-utility stipulation appear to have triumphantly extracted a promise from Ameren that it will work with stakeholders. Ameren has already met with stakeholders to discuss additional savings strategies. In fact, the evidentiary hearing in this case was delayed so that the parties could meet and attempt to work together (*See Unopposed Motion*

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To Reschedule Evidentiary Hearings, Doc. No. 96). As the Commission can infer, the parties were unable to resolve the many differences. The agreement to work together contained in the utility stipulation does nothing to ensure a different result. Given Ameren's continued threats to discontinue its MEEIA offering if it does not get its way, it is surprising that any party would believe that this "solution" has any purpose.

III. Ameren's flawed cost recovery mechanism

The company has applied to establish an energy efficiency portfolio as authorized by the Missouri Energy Efficiency Investment Act ("MEEIA"). Enacted in 2009, the MEEIA establishes Missouri's policy "to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." Mo. Rev. Stat. § 393.1075.3. In support of this policy, the statute provides that the Commission shall:

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

Mo. Rev. Stat. § 393.1075.3. To accomplish these three points, the parties generally agree that the company should recover three separate cost components associated with its MEEIA portfolio. The three components are program cost, throughput disincentive recovery, and performance incentive. In total, these cost components total hundreds of millions of dollars to be paid by ratepayers – many of whom will not directly participate in the program.

A. Program costs

The first component is program costs (Tr. Vol. 3, p. 830). Ameren initially requested program costs of $134,461,396 to reach an energy savings target of 426,382 MWh (Ex. 800, p.

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4). The terms of the utility stipulation would increase the program budget by approximately 47% to $197,209,859 (Doc. No. 100). This program cost increase is associated with an energy savings target of 583,563 MWh, a 37% increase from the original plan (*Id*.). This means that under the utility stipulation the company's program-cost-to-energy-saved ratio gets worse.

B. Throughput disincentive

The second cost recovery component, often called the throughput disincentive, is meant to ensure that utility financial incentives are aligned with helping customers use energy more efficiently (Tr. Vol. 3, p. 831). If a utility installs energy efficiency measures, it is not going to sell as much power as it would absent the efficiency program, and so, there is an economic disincentive against pursuing energy efficiency (*Id*.). To better align the company's financial interests, the throughput disincentive component provides cash to the utility to compensate the utility for revenues that it did not receive because of decreased energy sales due to the energy efficiency program (Ex. 700, p. 4).

The utility stipulation changes the mechanics of the throughput disincentive component so that it reflects a two-tiered approach to recovery (Ex. 105, p. 3). The first tier acts as a floor for recovery (*Id*.). This tier gives the company 27.68% of the forecasted net benefits resulting from the MEEIA programs (*Id*. at 8). The second tier represents an amount of throughput disincentive recovery to be collected later if the rate case timing is different than what was assumed for the first tier (*Id*. at 4). This second tier could give Ameren up to an additional 7.91% of the forecasted net benefits. Combining the two tiers in the utility stipulation would give Ameren approximately 35.60% of forecasted net benefits (*Id*. at 9). That percentage is a generous increase from the company's initial request of 32.57%. Even though Ameren over-

collected millions of dollars in Cycle 1, both of these percentages give Ameren a greater portion of the net benefits than the company's Cycle 1 share of 26.34% (Ex. 800, p. 4).

In addition to being overly generous, the utility stipulation throughput disincentive mechanism requires a complex present-valuing process requiring a multitude of assumptions in order to determine the forecasted net benefits (Ex. 703, p. 12). Using assumptions is a problem, in part, because the utility stipulation requests that Ameren receive accelerated recovery of its share of the net benefits, rather than recovery as benefits are incurred (Ex. 703, p. 12). The company's request for recovery is "accelerated" because Ameren would collect money up-front for the value of the decrease in sales revenue based on the "deemed" energy savings expected to be caused over the lifetime of each efficiency measure installed (Ex. 703, p. 12). The "deemed" value for each energy efficient measure is contained in the company's Technical Resource Manual ("TRM"). This means that Ameren collects money from ratepayers up-front to compensate it for a projected reduction of sales, even though its sales may not be reduced by that amount. Especially troubling is that the utility stipulation would prohibit any true-up or verification, stating:

> No values or amounts shall be revised, trued-up, or otherwise altered unless specifically provided for in this Stipulation or the Plan (or otherwise agreed to and memorialized in a future amendment to this Stipulation or the Plan and subsequently approved by the Commission).

(*Non-unanimous Stipulation and agreement*, Doc. No. 100, p. 3, par. 5). Since the company collects up-front, if the energy efficient measures do not cause the reduction in sales that they were projected to cause, Ameren would be paid for the forecasted, or "deemed," value of energy sales without ever actually experiencing a reduction in energy sales. It is paid twice – once for energy it actually sold to customers and then again for that same energy when the law says to get compensated only when it was not sold.

Ameren's request is not about energy efficiency, it is about shifting risk onto the ratepayers and maximizing revenues. When used to set rates, the approach of full deeming for the throughput disincentive cost component, in essence, insulates Ameren Missouri from the risks associated with achieving MEEIA-related kWh savings on which its deemed recovery amounts are based (Ex. 706, p. 4). Effectively, "deeming" as requested by Ameren would provide a guaranteed level of throughput disincentive reimbursement (*Id*.). Doing so perverts the purpose of the throughput disincentive and is inconsistent with the law. The purpose of the throughput incentive component is to compensate the utility for lost marginal revenue due to the efficiency activities (Ex. 301, p. 44). Without any true-up based on EM&V, ratepayers will pay Ameren more for the throughput disincentive component than Ameren actually lost in revenue (*Id*.). This risk is not merely hypothetical; Cycle 1 shows that "deeming" the throughput disincentive is a proven and significant financial risk to ratepayers.

In addition to inequitably shifting all risk to ratepayers, the utility stipulation does not appropriately compensate the company for achieving energy efficiency (Ex. 703, p. 6). Instead, using "deemed" values actually enables Ameren to profit by achieving less energy savings from its MEEIA programs than what it forecasts (Ex. 706, p. 4). Far from encouraging energy efficiency, under the utility stipulation, Ameren is incented to promote the efficiency measures that have the worst ratio of expected savings to actual savings (Ex. 703, pp. 5-6). This perverse incentive exists under the company's proposal because Ameren retains the financial incentive to sell as much energy as possible and would recover the throughput disincentive amount for "deemed" savings never subject to true-up (*Id*. at 18). Ameren witness Ms. Barnes testified that the company's business is to make investments to earn a return and to sell electricity to customers (Tr. Vol. 2, p. 499). That remains unchanged by the Company's proposed MEEIA

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cost recovery mechanisms. In fact, in Cycle 1 **

.** (Ex. 801 HC, p. 21).

Using the company's approach perversely incents Ameren to achieve less energy savings than projected (Ex. 703, p. 18). This perverse incentive makes Ameren's proposal totally inconsistent with pursuit of energy efficiency. In its Report and Order in EO-2011-0028, the Commission rejected a proposal by Ameren Missouri to address the throughput disincentive associated with its pre-MEEIA energy efficiency program, stating: "Ameren Missouri's proposed billing units adjustment relies on the willingness of the Commission and ratepayers to hand the company extra money while trusting to the good intentions of the company to avoid acting in compliance with its throughput incentive by maximizing sales while minimizing efficiency efforts." *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service,* Report and Order, pp. 39-40, *Iss'd* July 23, 2011, File No. EO-2011-0028, Doc. No. 594. In this case too, Ameren asks that the Commission trust the company to act altruistically and not to further a financial incentive. The difference here is that Ameren firsts asks the Commission to adopt its proposed cost recovery mechanism which *creates* the perverse incentive to achieve less energy efficiency savings than projected, and *then* asks for the Commission's trust that it will not to act in accordance with that financial incentive. The Company's proposal is ridiculous and has nothing to do with energy efficiency; it is only about greatly enhancing an already too-rich revenue stream.

To be fair, the utility stipulation does provide that one assumption, rate case timing, will be trued-up through the use of the second tier (Ex. 105). However, under the utility stipulation, that adjustment can only *increase* the throughput disincentive recovery (Ex. 703, p. 18). That means this true-up will benefit the company and will *never* benefit ratepayers.

1. The utility stipulation discards EM&V for the throughput disincentive

If the utility stipulation were about energy efficiency, measured and verified energy savings would be the focus – rather than an afterthought. The Ameren stipulation does not appropriately measure and verify energy savings and benefits as required by law. The proposal in the utility stipulation to use "deemed" values for the throughput disincentive cost component has nothing to do with energy efficiency. It is designed to allow Ameren to continue over-collecting millions of dollars from ratepayers. Rather than meaningfully addressing EM&V, as required by the MEEIA statute and Commission rules, the utility stipulation contains a provision that attempts to discredit EM&V, stating:

> The Signatories acknowledge that prospective views on energy efficiency as well as evaluation, measurement and verification ("EM&V") are inherently subjective. The values stated in this Stipulation shall be "black box" unless otherwise specifically stated and are not intended to be reflective of adherence to (or endorsement of) any specific modeling or methodological approach. The Signatories agree that all values contained in the Technical Resource Manual ("TRM") and the avoided costs and associated calculations are final and shall not be revised after the operation of the Demand-Side Investment Mechanism ("DSIM") is approved in this docket.

(*Non-unanimous Stipulation and agreement*, Doc. No. 100, p. 2, par. 5). The signatories to the utility stipulation attempt to broadly paint EM&V as "inherently subjective" without any basis.

Yet, the utility stipulation does not totally ignore EM&V. A footnote explains that "the TRM will be updated initially to reflect the results of the 2014 EM&V as well as for the programs added as a result of this agreement." (*Id*.) During the hearing, Ameren Witness Mr.

Voytas testified that "[t]he TRM is a direct result from the 2014 EM&V results. For whatever program, whatever was analyzed, those numbers are extracted from that primary market research done for EM&V and those numbers are directly put into the TRM." (Tr. Vol. 1, p. 256). Of course, when used for Ameren's purposes, the results of EM&V are based on "100 percent of primary market research" supported by "all the workpapers, the documents, the equations, the algorithms, the inputs that go into that." (*Id*.). Apparently, when the company uses EM&V results, it is not "inherently subjective" as described in the utility stipulation (*Non-unanimous Stipulation and agreement*, Doc. No. 100, p. 2, par. 5).

The company's reliance on EM&V results for the TRM should indicate that Ameren would have some level of confidence in future EM&V results. That would be a good step towards evaluating the performance of the company's MEEIA program and compensating Ameren for measured and verified energy savings attributable to the company's programs. This is not the case. Even though the company is itself relying on the EM&V results for its own purposes, if EM&V shows that energy savings or benefits attributable to the company's programs were different than the "deemed" value, there will be no "true-up."

Disturbingly, whenever a party asserts that EM&V shows that Ameren has over-collected millions of dollars, those *same* EM&V results, according to Ameren, are "totally subjective" and "can be an ocean wide." (Tr. Vol. 1, pp. 296-98). And so, rather than offering a proposal that evaluates, measures, and verifies that energy savings occurred, Ameren seeks to use "deemed" values, never to be trued-up (Doc. No. 100). If the Ameren proposal was at all about energy efficiency, then a robust and meaningful EM&V process should be an integral component to the energy efficiency portfolio. Sadly, it is not.

Why would Ameren attempt abandon EM&V for purposes of the throughput disincentive component? In short, because EM&V shows that Ameren has over-collected millions of dollars. Staff's analysis comparing the 2013 EM&V results to the "deemed" values indicates that, under the terms of the 2012 stipulation and agreement, the company over-collected $4,573,635 through the throughput disincentive in 2013 (Ex. 710, p. 17.). Staff also examined year 2014. Based on his analysis for 2014, Mr. Rogers' estimates that Ameren Missouri was over-compensated by nearly $25 million for its throughput disincentive component compared to what the throughput disincentive amount would be if the amount was based upon the utility's portion of annual net shared benefits achieved and documented through EM&V reports (*Id*.). Mr. Rogers' calculations arrive at the number $24,856,077 for 2014 by applying an avoided cost correction (Ex. 710, pp. 17-18). Applying an avoided correction is necessary in order to examine the value of the benefit of energy efficiency that ratepayers experience.

According to a section of the company's MEEIA plan authored by Mr. Voytas, "[t]he impact of lower avoided costs on energy efficiency is that the benefits of energy efficient measures have become smaller." (Ex. 100 HC, p. 27). Mr. Voytas continued, "[l]ower avoided costs can cause marginally cost-effective measures to become no longer cost effective, reducing potential; or can cause cost-effective measures to simply be less cost effective. *Either result reduces the total benefits realized by customers*." (Ex.100 HC, p. 27) (emphasis added). The change in avoided costs over the course of Cycle 1 is significant. Mr. Rogers testified, "[t]here's no question that the avoided cost in the marketplace is significantly less than it was expected to be. The end result is that the benefits to customers are much less than they were expected to be." (Tr. Vol. 3, p. 794). Even though a change in the avoided costs will impact the benefits created by a MEEIA program, Ameren opposes updating those costs. Mr. Voytas testified that doing so

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would not make any sense (Tr. Vol. 1, p. 289). Perhaps it does not make sense to Ameren Missouri because the company wants to collect its share of benefits up-front based on forecasted values. Doing that in Cycle 1 has allowed the company to over-collect millions of dollars from ratepayers. However, to ratepayers, updating the avoided costs to more accurately calculate the benefits ratepayers actually receive is not only reasonable, leads to a better plan, and is arguably required by MEEIA.

Without adjusting the EM&V results from program year 2013 and 2014, Ameren still over-collected for the throughput disincentive component. In his supplemental rebuttal testimony responding to the utility stipulation, Dr. Marke compared the Company's Cycle 1 deemed estimates for 2013 and 2014 with the savings determined as reported in the EM&V reports for those years (Ex. 803, p. 11). According to that calculation, Ameren collected $9,346,291 from ratepayers because it was able to use "deemed" values (*Id*.).

Even under the company's *own* calculation, Ameren over-collected $1,648,847 – for 2014 alone – from ratepayers through the throughput disincentive component (Ex. 118; Tr. Vol. 3, p. 769). Under this calculation from Ameren, the avoided costs are not updated (Tr. Vol. 3, p. 767).

In sum, under *every* scenario presented to the Commission in this case, Ameren Missouri has over-collected through the use of the throughput mechanism in Cycle 1. Despite over-collecting close to $30 million, Ameren still wants more. In Cycle 1, Ameren's sharing percentage of net benefits is 26.34%. In its Cycle 2 application, the company had the audacity to request increasing its share to 32.57%. Even more astonishing is that the utility stipulation further increases the company's share to 35.60%. If the company over-collected millions of

dollars in Cycle 1 when it "only" received 26.34% of net benefits, how many millions more will it collect in Cycle 2? What will it request in future MEEIA Cycles?

2. Ameren's attempt to discard EM&V in order to continue over-collection

Ameren's attempt to discard and discredit EM&V is unworthy of the Commission's credence and should be ignored. Ameren itself uses and relies on EM&V for its own purposes. Use of EM&V in its initial application and now the utility stipulation, albeit selectively applied by Ameren, is not surprising. After all, the measurement and evaluation of energy savings and benefits should be fundamental to any credible energy efficiency program and should be used to inform future decisions. A program without robust EM&V is not about energy efficiency, it is instead about money.

Consistent with that, most parties have offered a position that EM&V is important and should be done. Inexplicably, the Division of Energy, according to its witness, did not take a position on whether EM&V should be used. The following is an exchange between Public Counsel and Division of Energy witness Mr. Hyman.

> **Q (Mr. Opitz). Okay. So do you have a policy opinion about whether the MEEIA statute requires evaluation, measurement and verification, EM&V?**
> A (Mr. Hyman). I don't believe we've taken an opinion on that in this case.
>
> **Q. Do you think that the Company should perform evaluation, measurement and verification of its energy savings?**
> A. I don't believe we've taken an opinion on that in this case either.

(Tr. Vol. 2, pp. 554-55). Indifference on such an important issue related to energy efficiency is astonishing. Without appropriately measuring and verifying energy savings, a MEEIA program becomes less about achieving energy efficiency savings and more about forcing captive ratepayers to subsidize the business of program implementers. The Commission should follow

the MEEIA statute, Commission rules, and the recommendations of a bevy of experts that EM&V is vital to balancing the interests of the company and ratepayers.

Having examined the EM&V results from Cycle 1, it is transparent why Ameren attempts to discredit EM&V. Compared to the "deemed" values, the EM&V results show that Ameren has over-collected millions of dollars from ratepayers. This fact is undeniable. Still, Ameren goes to great lengths to avoid admitting it over-collected. Consider the following testimony of Mr. Voytas; despite being able to demonstrate detailed knowledge of EM&V results and the application of those results in response to questions from his own attorney or Chairman Kenney, his familiarity with the EM&V results *vanished* when questioned by Public Counsel about whether the company over-collected.

> **Q (Mr. Opitz). Are you aware that Ameren -- that Ameren Missouri has overcollected from ratepayers through the TDNSB --**
> A (Mr. Voytas). No, I'm not.
>
> **Q. -- in Cycle 1?**
> A. I am not aware of that.
>
> **Q. Have you read the testimony of Staff's witness John Rogers?**
> A. Yes, I have.
>
> **Q. And have you seen the table in his chart describing the deemed values compared to the realized values after EM&V?**
> A. Yeah. Unfortunately, you know, we got Mr. Rogers' testimony late last week and I took a day of vacation on Thursday and Friday so I didn't have a lot of time. But I know Ameren witness Bill Davis has looked at that and gotten into the numbers. And I think Mr. Davis can give you more insight as to what Mr. Rogers did versus what the Company may have done.
>
> **Q. So you disagree that the Company has overcollected through the throughput disincentive mechanism in Cycle 1?**
> A. I don't know, but I dis-- I do not agree that they did overcollect.
>
> **Q. So in other words, you are saying that the Company did not overcollect through the throughput disincentive mechanism?**
> A. I'm saying I don't know. I've not had time to examine the data.

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Q. But you just said that they did not overcollect?
A. Well, to the best of my knowledge, they did not, but I don't know that they did.

(Tr. Vol. 1, pp. 267-69). To address the timing claims of Mr. Voytas, the Corrected Rebuttal testimony of John Rogers was filed on April 17, 2015 and the Surrebuttal testimony of John Rogers was filed on April 27, 2015 (*See* Ex. 709, p. 31 and Ex. 710, pp. 17-18). Mr. Voytas was on the witness stand on July 20, 2015 (Tr. Vol. 1). Both of those pieces of testimony contained the chart describing the deemed values compared to the realized values after EM&V. Setting aside Mr. Voytas' claim to have had insufficient time to examine the data, he testified that the company's TRM and plan relied on the 2013 and 2014 EM&V results (*See* Tr. Vol. 1, pp. 298-99; Tr. Vol. 1, p. 256). If the EM&V results are relied on to determine the amount of money the company collects from ratepayers, it is wrong for the company to claim that those *same* EM&V results are too uncertain for purposes of attributing realized savings from the company's MEEIA program.

When asked by Chairman Kenney about EM&V, Mr. Voytas' answer reflected a far greater recollection of, and confidence in, the EM&V results when it comes to updating the TRM (Tr. Vol. 1, pp. 253-54). As explained previously, when EM&V results are to be used for Ameren's purposes, Mr. Voytas testifies confidently that the results are "based on 100 percent primary data collected from Ameren Missouri customers." (*Id*.). Yet, whenever the *same* EM&V results are to be applied for the purpose of protecting ratepayers, Mr. Voytas dissembles and his testimony transforms into a lamentation that "the range of values from EM&V especially on a net-to-growth side *can be an ocean wide*." (Tr. Vol. 1, p. 298) (emphasis added). The inconsistency is glaring.

Although Mr. Voytas' view of EM&V and familiarity with the EM&V reports shifts, warbles, and contorts whenever convenient for Ameren's purposes, even he refrained from

claiming directly that the company did not over-collect (Tr. Vol. 1, pp. 267-69). Looking at the available facts, by all accounts, Ameren over-collected in Cycle 1.

The proposed throughput disincentive cost component in the utility stipulation continues the inequitable and illegal risk shift from Cycle 1. Under the company's proposal, if the benefits of the portfolio fail to materialize, ratepayers would still pay Ameren the predetermined share of projected benefits (Ex. 703. pp. 1-2).

C. Performance incentive

The third component, often called the performance incentive, should provide the company with an earnings opportunity "associated with cost-effective measurable and verifiable efficiency savings." Mo. Rev. Stat. § 393.1075.3(3); (Tr. Vol. 3, p. 832).

It should be fundamental that an energy efficiency plan should have meaningful energy savings targets. As explained earlier, Amerens energy savings targets are artificially low. Here, despite setting an energy savings target much lower than its Cycle 1 goal, Ameren requests a much larger performance incentive. (Doc. No. 100). In Cycle 1, the Company's maximum performance incentive was 6.19% of net benefits (Ex. 800, p. 4). It its application, the company requested to increase that amount (*Id*.). Now, in the utility stipulation, Ameren asks for 16.86% of net benefits. Importantly, Ameren's low target in Cycle 2 means that the company will not have to achieve as much energy savings in order to receive a larger financial reward. The language of the utility stipulation provides:

> After the conclusion of the three-year Plan period, using final EM&V results (with EM&V to be performed after each of the program years 1, 2 and 3), Ameren Missouri will be allowed to recover the Performance Incentive, which is $30 million if Ameren Missouri achieves this new target and is collected as a percentage of NSB as described on Appendix A attached hereto and incorporated herein by this reference (the "Performance Incentive Award").

(*Non-unanimous Stipulation and agreement*, pp. 13-14, Doc. No. 100). Appendix A, includes the following chart explaining Ameren's proposed performance incentive.

Performance Incentive

Percent of % MWh Target	3-Year Total ($MM)	3-Year Total (2016 NPV $MM)	Percent of Net Benefits
<70	$0.00		0.00%
70	$19.2	$14.5	12.52%
80	$22.8	$17.2	13.01%
90	$26.4	$19.9	13.39%
100	$30.0	$22.6	13.70%
110	$36.0	$27.2	14.94%
120	$42.0	$31.7	15.98%
130	$48.0	$36.2	16.86%
>130			16.86%

(*Non-unanimous Stipulation and agreement*, Appendix A, Doc. No. 100). Under Appendix A of the utility stipulation, if Ameren reaches 70% of its energy savings target then it will receive at least $19.2 million (*Id*.). For reaching 70% of its energy savings target, more commonly called "underachieving," $19.2 million is a very lucrative reward. But that amount is modest compared to the $48 million plus reward if Ameren reaches 130% of its energy savings target (*Id*.). This escalating performance incentive is a primary reason that Ameren would underestimate its potential energy savings and request a low target. By establishing a low target, Ameren sets itself up to attain more easily the highest amount of performance incentive with minimal effort.

Multiple witnesses testified that Ameren's energy savings target in the application was artificially low. It is true that the utility stipulation appears to have a higher energy savings target, but that increase merely brings the proposed target in line with an artificially low market potential study. In exchange for magnanimously agreeing to increase the energy savings targets to levels that it minimally should have achieved anyway, Ameren negotiated for itself a significant increase in the performance incentive (*See* Doc. No. 100). Mr. Davis testified that the

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increase to the performance incentive is “an appropriate increase given that the Stipulation increases the targeted energy savings by 37%.” (Ex. 105, p. 11). It is inappropriate to give Ameren a more lucrative performance incentive for doing what it should have done in the first place. Giving Ameren an increase to the performance incentive is not a reward for achieving meaningful energy savings targets, it is more akin to paying a ransom.

Ameren’s request is made worse because it does not measure or verify the energy savings as required by law. The utility stipulation requests the use of a procedure in Appendix B that eviscerates the EM&V process and purpose. At first glance, the utility stipulation appears to address the measurement and evaluation of energy savings rather than using “deemed” values. This appearance is a facade. The utility stipulation provides:

> Actual net energy savings for each program year will be determined through the EM&V, the annual application of net-to-gross shall follow the process described in Appendix B, with the sum of the three years' actual net energy savings to be used to determine the amount of the Performance Incentive Award.

(*Non-unanimous Stipulation and agreement*, Doc. No. 100, p. 14). A closer examination of Appendix B, titled “Procedures Applicable to Evaluation, Measurement, and Verification ("EM&V") Reports,” reveals that the procedures contained therein result in using “deemed” values. (*Non-unanimous Stipulation and agreement*, Appendix B, Doc. No. 100). Ameren witness Mr. Davis explained that the procedure in the utility stipulation “results in a deemed net-to-gross of 1.0 for a given program year if both the Company's evaluation contractor and the Commission's auditor portfolio-wide average energy savings falls within a net-to-gross range of 0.9 to 1.1.” (Ex. 105, p. 11). Adopting that procedure would strip the stakeholders of a significant right, the right to challenge the results of the independent evaluator. At the same time, the proposed procedure minimizes the role of the Commission’s independent auditor by averaging the results of the auditor and evaluator, and then applying the “deemed” measure

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values to resolve any differences. Only when the disagreement between the evaluator and auditor is so great as to fall outside of a range would stakeholders have the opportunity to challenge the EM&V results (*See* Doc. No. 100). The right to contest the independent evaluator results becomes more important knowing that the company does not share the same understanding of what constitutes "independent" as Public Counsel. In an exchange with public counsel, Ameren witness Mr. Laurent testified:

> **Q (Mr. Opitz). Does Ameren propose that its attorneys would represent the EM&V audit- - EM&V evaluator?**
> A (Mr. Laurent). I don't know. I mean I - - I - - again, that's a question that if I was posed with, I would consult with our legal team and ask for their input.
>
> **Q. If they're supposed to be independent, would you agree that Ameren's attorney probably shouldn't represent that independent evaluator?**
> A. No. I think you can be independent regardless of who represents you.

(Tr. Vol. 2, p. 333). The relationship between an attorney and a client is such that the evaluator could not truly be independent if represented by Ameren's attorneys. Moreover, should a company attorney represent the independent evaluator, conflict of interest concerns necessarily arise. *See* Mo. Sup. Ct. Rule 4-1.7.

Lest the Commission be persuaded into thinking that a simplified process is at all necessary – it is not – the results of the EM&V process generally have not been contentious (Ex. 803, p. 15). In fact, only one program's results in one year have been challenged by a stakeholder (*Id*.). The unique situation surrounding that program is not likely to occur again, nor should it be held as the sole reason to discredit the EM&V process and minimize the role of the Commission's independent auditor (*Id*.).

Mr. Davis' testimony indicates that the utility stipulation approach in Appendix B "adopts the approach reflected in the agreement resolving the first program year results from the Company's MEEIA I energy efficiency programs." (Ex. 105, p. 11). To be clear, Public Counsel

opposes the company's proposal. Instead, Public Counsel supports the full retrospective EM&V to attribute accurate savings incurred by the company. To the extent that the company's proposed Appendix B may be similar to the terms of the *Second Non-Unanimous Stipulation and Agreement Settling the Program Year 2013 Change Requests* in Case No. EO-2015-0142, it has no bearing on the present case. The stipulation resolving the 2013 Change Requests resulted from extensive negotiations and interdependent concessions by the parties to resolve an isolated change request case for the company's Cycle 1 portfolio. Full evaluation, measurement, and verification of energy savings should not default to the terms of a context-specific agreement, nor has the company provided any reason that EM&V should be limited in this way.

Without proper evaluation and measurement, a performance incentive based on kWh savings is problematic. As designed in the utility stipulation, Ameren has an obligation to its shareholders to implement MEEIA programs so that Ameren receives the maximum payout under the kWh-based performance incentive while not giving up any earnings opportunity related to future capacity investments (Ex. 703, p. 6). The interplay between the designs of the company's proposed throughput disincentive component and the performance incentive component enables Ameren to do so and may incent the company to offer programs designed to have high kWh savings that will not reduce peak demand, thereby allowing Ameren to continue investing in power plants. Considering the flawed design of both the cost recovery mechanism and certain programs in the utility stipulation, ratepayers are better off with no MEEIA portfolio than the utility stipulation (*Id.*).

IV. Utility stipulation is not beneficial to all ratepayers

The law does not permit recovery for MEEIA programs "unless the programs are approved by the commission, result in energy or demand savings and are beneficial to all

customers in the customer class in which the programs are proposed regardless of whether the programs are utilized by all customers." Mo. Rev. Stat. § 393.1075.4. The utility stipulation fails to meet this requirement.

When factoring in all the costs that ratepayers will pay under the terms of the utility stipulation, including the throughput disincentive and performance incentive, the majority of Ameren Missouri customers will likely receive very little, if any, overall net benefits from the programs and the cost recovery mechanism in the utility stipulation (Ex. 712, p. 7). Specifically, for residential customers, Staff's analysis showed that residential customers who are non-participants will pay $112 million in program costs over 3 years (program costs and throughput disincentive cost paid in program years 1, 2, and 3 and the performance incentive paid in program years 5 and 6) with potential benefits of $119 million over 20 years as a result of the utility stipulation (*Id*. at 8). Again, the benefit to customers only comes as an estimate and over 20 years, whereas the price paid is actual and paid up-front (*Id*.).

The company's testimony that its portfolio is beneficial to all customers does little to provide any assurance that benefits to ratepayers will materialize in Cycle 2. Ameren witness Ms. Berk was able to come up with a calculation that the company's proposal would reduce rates to benefit all customers (Ex. 104, pp. 9-10). However, Ms. Berk's calculations required extending cost-recovery assumptions all the way to the year 2044 (Ex. 104, p. 7). There is no reason to have confidence that this calculation is accurate. In addition, Ms. Berk's calculation used a performance incentive amount of $30 million, wholly failing to consider that the company could be awarded a much greater performance incentive (Tr. Vol. 1, pp. 215-216). Moreover, even with all of Ms. Berk's erroneous assumptions baked in, the benefit to ratepayers is almost non-existent (*See* Ex. 114).

The terms of the utility stipulation are not about energy efficiency. They do not follow the law and they fail to align the utility's financial incentives in a way that helps customers use energy more efficiently and in a manner that sustains the customers' incentives to use energy more efficiently. The utility stipulation is solely focused on ensuring that Ameren continues to over-collect millions of dollars from ratepayers. If the utility stipulation were the only option, there should be no program.

V. The non-utility stipulation provides a comprehensive solution

Public Counsel and the signatories to the non-utility stipulation have presented the Commission with an alternative option. The terms of the non-utility stipulation and agreement remove disincentives to Ameren's promotion of demand-side programs, properly incent Ameren in the promotion of demand-side programs, and balance the financial interests of ratepayers and the company while achieving verifiable energy savings and creating a pathway for even more energy savings.

A. The non-utility stipulation presents a solution to address the artificial savings targets resulting from a flawed potential study

Multiple parties raised concerns about the energy savings targets for Ameren's Cycle 2 MEEIA portfolio. As discussed earlier, the market potential study relied on as the basis for the energy savings targets in this case is flawed. The non-utility stipulation provides the only practical way to fix the low energy savings targets that stem from Ameren's flawed market potential study and resolve future conflicts.

To do so, the non-utility stipulation includes a process for a third-party mediator to select a panel of experts who may recommend possible increases in the projected kWh savings of the total portfolio for program years 2017 and 2018 (Ex. 802, p. 11). This process can address the

myriad of concerns stakeholders have raised in this case about the energy savings levels for MEEIA Cycle 2 (*Id*.). The first step in the process would require Ameren to issue a request for proposals by October 31, 2015, to identify the third-party mediator (Ex. 802, p. 11). The mediator then would select a panel of experts who may make recommendations about the portfolio-wide kWh savings targets. The panel of experts will be able to rely on primary data from Ameren's market potential study, historical activity to date, and industry trends and best practices from comparable jurisdictions as the foundation for their estimates (*Id*.). Based on the recommendations of the panel of experts, the mediator will issue a report to the Commission (*Id*.). After the mediator issues the report to the Commission on the findings of the panel, stakeholders shall have the opportunity to file comments responding to the report (*Id*.). Then, after the report and comments, the Commission may issue an order adjusting the projected kWh savings of the portfolio for program years 2017 and 2018 accompanied by an additional performance incentive related to exceeding the Commission-approved energy savings target after full EM&V (*Id*. at 11-12). As an additional benefit to the company, the results of any report issued by the third-party mediator will not change the demand-related (kW) savings target set forth in the non-utility stipulation (*Id*.).

A panel of experts is a method that has been used in other jurisdictions. Dr. Marke testified that Commissions or energy efficiency advisory groups have utilized a mediator and an expert panel process in Michigan, California, Massachusetts, Wisconsin, New Mexico, and Oregon, among others (Ex. 802, p. 9). Ameren's witness Ms. Rohmund testified that she herself had been involved in a panel, also known as a Delphi panel, in New Mexico (Tr. Vol. 1, pp. 185-86). Ms. Rohmund explained what she meant by a Delphi panel:

> **Q (Ms. Tauber). Can you explain to the Commission, you know, what is a Delphi panel, first of all? I'll ask you that.**

> A (Ms. Rohmund). So a Delphi panel is generally a group of experts, defined by someone, who are asked to give their informed opinion on certain topics. And the individuals provide their responses and then in some manner a unified answer is created.

(Tr. Vol. 1, p. 186). Thus, the panel of experts can be utilized to help resolve disputes over highly contentious issues (Ex. 802, p. 8). This is exactly the situation in this case, and the proposal contained in the non-utility stipulation presents a solution. Sierra Club witness Mr. Woolf explained that part of the reason that Sierra Club joined the non-utility stipulation was the third-party mediator process:

> And the main reason that Sierra Club chose this stipulation, the non-utility one, is not because of the energy savings in it. It's because of the process that was laid out to look into increased energy savings for years 2017 and 2018 and also because more comfort with the throughput disincentive and the shareholder incentive.

(Tr. Vol. 2, pp. 430-431). The non-utility stipulation lays out a blueprint for the company to work collaboratively with stakeholders and a panel of experts to identify and recommend additional programs and possible increases to projected kWh savings for the second and third years of the MEEIA program rather than accepting a portfolio of programs that is merely tolerable to only *some* parties.

In addition to providing a path to resolve contentious issues and to identify and pursue additional energy savings during Cycle 2, the non-utility stipulation has a higher energy savings target than the company's initial application. (*See* Doc. No. 119 and Ex. 800). The non-utility stipulation and agreement adds the energy savings and program costs associated with the Small Business Direct ("SBDI") program and the Multi-Family Low Income ("MFLI") program contained in the utility stipulation (*See* Doc. Nos. 100 and 119).

Similar to the utility stipulation, the non-utility stipulation would include a Small Business Direct program to benefit small business customers that are difficult to reach through

traditional energy efficiency programs (Doc. No. 119). Small business customers represent a sizable opportunity for ratepayer-funded energy efficiency programs in the Ameren Missouri service territory because the Small General Service ("SGS") customer class is the second largest rate class in terms of total customers, with approximately 146,000 (Ex. 802, p. 4). However, gaining the attention of small business customers and getting those customers to invest in efficiency upgrades has proven to be a challenging task (*Id*.). The proposed SBDI program represents a modest, cost-effective approach that provides a program tailored to a traditionally underserved segment (*Id*.). Moving forward, this program should provide not only cost-effective savings, but also valuable insight into how best to target the SGS class for future MEEIA cycles, including the appropriateness of flexible financing options (*Id*.). Based on the data provided by the company, the SBDI program is projected to provide an additional 5.1 MW of demand savings and 300 MWh of energy savings (*Id*.).

The MFLI program in the non-utility stipulation is a significant enhancement over Ameren's initial application to better serve this hard-to-reach population (Ex. 802, p. 5). Moreover, the MFLI program proposal in the non-utility stipulation is superior to the proposal contained in Ameren's stipulation. National Housing Trust witness Anika Brink testified that "the multi-family low-income program is basically the same in both of the agreements[.]" (Tr. Vol. 3, p. 708). But, Ms. Brink further testified "… there's two small pieces missing from the Company's Stipulation that are present in the PSC Staff/OPC agreement that we do prefer, which is applying the 25 percent bonus incentive to residential measures and including cost information in energy audit reports." (Tr. Vol. 3, p. 708).

To address the first point, the program in the non-utility stipulation would provide an additional 25% bonus incentive above the measure incentive in place for multi-family low

income property owners for whole building and common area measures, as well as for in-unit measures (Ex. 802, p. 5). In return for the bonus incentive, the property owners that receive a bonus incentive must agree that their units can be tracked for at least one year for aggregate energy and demand savings in order to provide a business case analysis for prospective MFLI property owners in future MEEIA cycles (*Id*.). As to the second point, the non-utility stipulation would enhance the program to include energy audits to provide information on savings, recommended energy efficiency measures, and typical payback ranges (Ex. 802, p. 6). The purpose of the audits would be to increase customer understanding and help increase program participation.

Further, the MFLI program under the non-utility stipulation is better because it reaches more people. Tower Grove Witness Dana Gray indicated that the terms of the non-utility stipulation and agreement are preferable because it would provide that more multi-family properties, particularly in St. Louis, would be eligible to participate in the program (Tr. Vol. 3, pp. 720-21). Simply put, the MFLI program in the non-utility stipulation is better.

B. The cost recovery mechanism in the non-utility stipulation balances the interests of the company and ratepayers

The cost recovery mechanism outlined in the non-utility stipulation has three main components: program costs, net throughput disincentive, and performance incentives. Importantly, these components are designed to avoid the multitude of flaws in the cost recovery mechanism proposed in the utility stipulation.

1. Program cost component

The first component is program cost. The Company should receive program costs roughly contemporaneous with the occurrence of those costs (Doc. No. 119). These costs should

continue to be subject to thorough prudence review as long as they are collected from ratepayers. As provided in the non-utility stipulation the operation of this cost recovery component should be similar to the Net Program Cost component in the Rider EEIC for MEEIA Cycle 1 (Doc. No. 119).

2. Throughput disincentive

The second component is the net throughput disincentive mechanism. This is designed to allow Ameren to bill and retain the unrealized revenue caused by its promotion of energy efficiency programs (Ex. 702, p. 5). Under the non-utility stipulation, Ameren would be compensated for its throughput disincentive on a per-measure installed basis attributable to MEEIA program offerings (Ex. 706, p. 2). Each month, Ameren will be allowed to bill to customers 66.67% (two-thirds) of the calculated throughput disincentive amount as part of its MEEIA rate rider mechanism (*Id*). Following each program year, "EM&V" and "Net Savings in ratio to Gross Savings ("NTG")" analyses will be performed to determine the realized amount of kWh savings actually achieved by Ameren in that year (*Id*.). If the results show that the amount of the actual revenue forgone by Ameren because of its efficiency program exceeds the amount previously billed by Ameren, then the company will be allowed to bill its customers for the remaining lost revenue up to 133.33% of its previous estimate (*Id*. at 3). To the company's benefit, it will not have to refund any previously billed amounts (*Id*.)

As an alternative, under the non-utility stipulation the company could collect 100% of its estimated throughput disincentive amount upfront, but one-third of that amount would be subject to later true-up and ratepayer refund if the forecasted kWh savings are not achieved (Ex. 706, p. 8). This component provides Ameren with revenue in lieu of the revenue it does not earn as a result of energy efficiency programs it offers and promotes (Ex. 702, pp. 4-5).

As proposed in the non-utility stipulation, the throughput disincentive component will make Ameren financially indifferent to whether or not it promotes demand-side programs (*Id*.). Importantly, under terms of the non-utility stipulation, this does not require complicated and unnecessary assumptions about the present value of forecasted energy savings. That is because this mechanism will compensate Ameren on an as-incurred basis. And because the energy savings will be subject to evaluation and measurement, there is less risk to ratepayers that the company will continue to over-collect millions of dollars.

3. Performance Incentives

The third component of the alternative cost recovery mechanism is comprised of the performance incentives. This component contains multiple subparts to incent the company to pursue energy efficiency in a manner that is beneficial to all ratepayers. First, the non-utility stipulation provides for a demand-related performance incentive that would be based on the demand (kW) savings associated with the installation of measures that impact future capacity requirements (Ex. 702, p. 9). The demand-related performance incentive would give Ameren a performance incentive meant to approximate the present value of the earnings opportunity that the company would receive on supply-side investments if the company had not pursued energy efficiency (Ex. 702, p. 9). Specifically, the demand-related performance incentive has two tiers. If the company achieves 121,100 kW savings, Ameren will receive an incentive equal to additional coincident peak demand (kW) savings multiplied by the approximate value of the forgone earnings opportunity, which is $48/kW (Ex. 702, p. 10). The first tier uses the Meramec plant as a reasonable surrogate to develop a value for the forgone earnings opportunity (Ex. 702, p. 9). For achievement of demand (kW) savings that exceed 834,000 kW, Ameren will receive a second-tier demand incentive of $250/kW, not to exceed an additional 166,000 kW (*Id*.). The

second tier is based on the approximate value to shareholders of a deferred investment in a combined cycle plant pursuant to modeling provided in Ameren's integrated resource filing (*Id.* at 9). The demand-based performance incentive described above would give Ameren Missouri the opportunity to earn approximately $75.7 million.[3] However, unlike the utility stipulation, the company will not receive any incentive until it exceeds 100% of its target. Ameren should not be rewarded for failing to achieve its goals.

A demand-based performance incentive is a reasonable way to provide Ameren "an earnings opportunity associated with cost-effective and verifiable efficiency savings," as required by the statute. Mo. Rev. Stat. § 393.1075.3(3). The language of the MEEIA statute specifically considers demand savings, stating, "[r]ecovery for such programs shall not be permitted unless the programs are approved by the commission, [and] result in energy or *demand savings*[.]" Mo. Rev. Stat. § 393.107.4 (emphasis added). At sections 7(1) and (3) the statute uses demand as a measure to determine qualified opt-out customers. Mo. Rev. Stat. § 393.1075.7(1) and (3). Further, section 12 describes the requirements of an annual report to the Commission requiring that "[t]he report shall document program expenditures, including incentive payments, *peak demand* and energy savings impacts and the techniques used to estimate those impacts[.]" Mo Rev. Stat. § 393.1075.12 (emphasis added). The plain language of the MEEIA statute contemplates both the inclusion and use of demand savings for a variety of purposes.

In addition, the Western District Court of Appeals has held that "[t]he goal of energy efficiency programs is to decrease customer use of and *demand* for electricity." *See State of Missouri ex rel. Pub. Counsel v. PSC of Mo.*, 397 S.W.3d 441, 452 (Mo. App. W.D. 2012) (emphasis added). In that case, the Court also examined the definition of demand-side programs found at Commission Rule 4 CSR 240-20.094(1)(I) and explained that energy efficiency

[3] (712,100 kW x $48/kW) + (166,000 kW x $250/kW) = $75,719,200.

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includes reducing demand for electricity, as follows: "Stated another way, demand-side programs are programs instituted by a utility *in an effort to increase energy efficiency by reducing its customers' use of and demand for electricity*." *Id*. at p. 445 (emphasis added). The Commission itself, in Ameren's recent rate case, concluded that MEEIA is "a statute designed to encourage electric utilities to invest in energy efficiency measures that will reduce the need to invest in energy production infrastructure." *See In the Matter of Union electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service*, File No. ER-2014-0258, Report and Order, *Iss'd* April 29, 2015, p. 17. If demand savings reduce the need for capacity which, in turn, reduces the need for electric utilities to invest in energy production infrastructure, then an incentive based on achieving demand savings is strongly preferred. Moreover, incenting demand reductions can enable all ratepayers to experience benefits from a MEEIA portfolio regardless of participation (*See* Ex. 703, pp. 4-6). A portfolio that reduces the utility's capacity requirements is more likely to reduce the need of the utility to build a power plant in the future (*Id*.). This mechanism is reasonable, and compared to proposal in the utility stipulation, the preferable way to provide Ameren with a performance incentive.

As a way to increase ratepayer participation, the non-utility stipulation provides for a customer-participation performance incentive. This is the second component of the performance incentive (Ex. 802, p. 8). To encourage Ameren to pursue programs that have broad customer impact and ensure that low-income customers also can benefit from MEEIA, the customer-participation performance incentive will be made available to the company to include 5% of program costs associated with Ameren Missouri's Custom/Standard or residential programs for multi-family low-income units and/or Ameren Missouri's multi-family low-income direct install program (*Id*.). Under this incentive Ameren may earn an additional $537,500 (*Id*.). This

additional performance incentive furthers the goal of encouraging more customers to use energy more efficiently and gives Ameren an opportunity to earn more money for success in achieving that end.

In addition to the demand-related performance incentive and the customer participation performance incentive, there is the possibility for a third performance incentive component. An energy-related (kWh) performance incentive may be available based on the recommendations of the panel of experts convened by a third-party mediator as described in the non-utility stipulation (Doc. No. 119). If the Commission orders a change to the company's kWh savings target for 2017 and 2018, it may provide the company a third performance incentive based on the kWh savings achievement at the following amounts: $2 million at 105%, $3 million at 130%, and $5 million at 150% (Ex. 802, p. 12).

In total, the performance incentives outlined in the non-utility stipulation are far greater than the incentive provided in the utility stipulation. One notable difference is that the non-utility stipulation performance incentives do not reward the company for underperforming, or meeting only 70% of its energy savings target (*See* Doc. Nos. 100 and 119). Most importantly, the performance incentives outlined in the non-utility stipulation are tied to measured and verified achievement of savings targets, targets that are more likely to reduce the need for capacity, and which, in turn, will reduce the need for Ameren to invest in energy production infrastructure.

VI. Conclusion

Encouraging utility sponsored energy efficiency does not require the Commission to endorse whatever flawed and unlawful terms a utility desires. The MEEIA statute provides that "[t]he commission shall permit electric corporations to implement *commission-approved* demand-side programs[.]" Mo. Rev. Stat. § 393.1075.4 (emphasis added). Further the law

specifically prohibits recovery for MEEIA programs unless the plan is approved by the Commission (*Id*.). Thus, the MEEIA statute empowers the *Commission* to decide what programs a company can offer. Despite what some parties may believe, it is the *Commission* that dictates the outcome in this case – not Ameren.

The Commission's approval is especially important to Ameren because its proposal is not actually about energy efficiency – it is about money. At no point has Ameren's MEEIA program focused on energy efficiency. In its initial application and now in the utility stipulation, Ameren's sole focus has been money. The utility stipulation is too expensive, contains artificially low energy savings targets, and places too much risk on ratepayers. The cost recovery mechanism ensures that Ameren will over-collect millions of dollars in Cycle 2, just as it did in Cycle 1. Under the utility stipulation, ratepayers would be required to pay Ameren a performance incentive for achieving only 70% of an artificially low energy savings target. The company's proposal has nothing to do with energy efficiency, in fact contrary to what is required by law, it does not even attempt to properly evaluate and measure the energy savings it achieves. The *only* thing that the utility stipulation does is give Ameren another lucrative revenue stream.

The Commission has the opportunity to tell Ameren under what conditions Ameren can earn millions of dollars while pursuing energy efficiency programs – programs that the company, at least arguably, should be pursuing whether or not it has a MEEIA portfolio (Tr. Vol. 2, p. 462). Public Counsel has presented the Commission with an alternative plan that accomplishes the goals of MEEIA, protects ratepayers, pursues cost-effective energy efficiency, will enrich the shareholders of Ameren Missouri, and is legal. Energy efficiency in Missouri is at a crossroads, the Commission should adopt the path offered in the terms in the non-utility stipulation to

establish the conditions by which Ameren can earn millions of dollars pursuing energy efficiency programs.

WHEREFORE, the Office of the Public Counsel submits its post-hearing brief and requests that the Commission issue an order adopting the terms of the Amended Non-utility Stipulation and Agreement.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13th day of August 2015:

/s/ Tim Opitz

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