

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

Ameren Missouri’s Request for Waivers for its)
Missouri Energy Efficiency Investment Act) **File No. EO-2014-0075**
Programs) **Tariff No. YE-2014-0223**

**STAFF RECOMMENDATION TO APPROVE TARIFF SHEETS
AND GRANT VARIANCES**

COMES NOW Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, and files this Staff Recommendation with the Missouri Public Service Commission (“Commission”) stating as follows:

Background

1. On July 5, 2012, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri”), along with the other parties¹ to Case No. EO-2012-0142, filed a *Unanimous Stipulation And Agreement Resolving Ameren Missouri’s MEEIA Filing (“Agreement”)*. As part of the *Agreement*, paragraph six (6) provides that pending the then ongoing legal challenges to the lawfulness of recovery using the Demand Side Programs Investment Mechanisms (“DSIM”) Rider² being resolved in favor of its lawfulness and prior to any final true-up of the Missouri Energy Efficiency Investment Act (“MEEIA”) Programs’ costs or Ameren Missouri’s Throughput Disincentive-Net Shared Benefits (“TD-NSB”) Share, then the respective associated regulatory asset or regulatory liability balance and Performance Incentive Award shall (except as otherwise provided for in the *Agreement* at paragraph 7) be recovered from/returned to customers

¹ Laclede Gas Company, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company were not signatories to the Agreement, but indicated they did not oppose the Stipulation. Consequently, the Commission’s Rule 4 CSR 240-2.115(2)(B) and (C) allowed the Commission to treat it as unanimous.

² Rule 4 CSR 240-20.093 (4).

via such a rider. The *Agreement* also contains several variance requests from provisions of the MEEIA rules (Rules 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094) where the terms and conditions of the Agreement were possibly inconsistent with the rules.

2. On August 1, 2012, the Commission issued an Order approving the *Agreement* with the requested variances.

3. Subsequently, on May 29, 2013, the Missouri Western District Court of Appeals issued a *Mandate* affirming its January 2013 decision finding the MEEIA Rider lawful.

4. On November 20, 2013, Ameren Missouri filed tariff sheets to implement the recovery of MEEIA DSIM amounts using a rider. Ameren Missouri also requested the Commission grant it variances from Rules 4 CSR 240-20.093 (1)(N), 4 CSR 240-20.093(2)(I) and 4 CSR 240-20.094 (1)(L) regarding semi-annual adjustments, and Rule 4 CSR 240-20.093 (5)(A) regarding the length of the DSIM.

5. Also on November 20, 2013, the Commission issued its *Order Directing Staff To File A Recommendation And Establishing Time For Other Parties To Respond* that directed Staff to complete its review and file a recommendation on the tariff sheets no later than December 10, 2013. This Staff Recommendation complies with the Commission's *Order*.

Analysis and Recommendation

6. As mentioned in Ameren Missouri's Request For Waiver, Ameren Missouri discussed its proposed tariff sheets with Staff. Attached hereto is Staff's

Memorandum where it recommends the Commission approve the proposed tariff sheets assigned Tracking No. YE-2014-0223 to become effective on January 27, 2014, and grant the requested variances. The tariff sheets are in compliance with the MEEIA *Agreement* and are designed to recover the amounts approved by the Commission.

7. Further, Staff has identified an additional variance not requested by Ameren Missouri, but recommended by Staff. Rule 4 CSR 240-20.093(2)(J) provides that if the Commission approves a utility incentive component of a DSIM, the utility incentive component shall be binding on the electric utility for the entire term of the DSIM, unless otherwise ordered or conditioned by the Commission when approved. The *Agreement* approved by the Commission contains incentive components. To eliminate any confusion, Staff believes Ameren Missouri's proposed tariff sheets also require relief from Rule 4 CSR 240-20.093 (2)(J) to allow it to implement the Rider as proposed, which is different than the current line item and tracker recovery mechanism.

8. The Commission's MEEIA Rules 4 CSR 240-3.163 (11), 4 CSR 240-3.164 (6), 4 CSR 240-20.093 (13) and 4 CSR 240-20.094 (9) allow the Commission to grant variances from any provision of the rules for good cause shown.

9. Although the term "good cause" is frequently used in the law,³ the rules allowing waivers or variances typically do not define it. Therefore, it is appropriate to

³ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

resort to the dictionary to determine the term's ordinary meaning.⁴

10. Good cause "...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."⁵ Similarly, "good cause" has also been judicially defined as a "...substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties."⁶ Similarly, it can refer "...to a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one."⁷

11. Of course, not just any cause or excuse will do. To constitute good cause, the reason or legal excuse given "...must be real not imaginary, substantial not trifling, and reasonable not whimsical..."⁸ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁹

12. Staff recommends the Commission grant the variances Ameren Missouri requests, as well as the additional variance identified by Staff: 4 CSR 240-20.093 (1)(N), 4 CSR 240-20.093(2)(I), 4 CSR 240-20.094 (1)(L), 4 CSR 240-20.093 (5)(A) and 4 CSR 240-20.093(2)(J). Good cause exists for the Commission to grant the variances from Rules 4 CSR 240-20.093 (1)(N), 4 CSR 240-20.093(2)(I) and 4 CSR 240-20.094

⁴ See *State ex. rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term "good cause" as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5.

⁵ Black's Law Dictionary, p. 692 (6th ed. 1990).

⁶ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective "ordinary person" standard. See *Central Mo. Paving Co. v. Labor & Indus. Relations Comm'n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) ("...[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.")

⁷ *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

⁸ *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁹ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975).

(1)(L) as requested by Ameren Missouri in that the Commission approved a variance from the requirement of semi-annual adjustments as part of the *Agreement*. The additional variances are intended to allow relief from the requirement of semi-annual adjustments referenced in these provisions. In regard to variances from Rules 4 CSR 240-20.093 (5)(A) and 4 CSR 240-20.093(2)(J), the Commission approved the recovery of incentive components of the DSIM over a period longer than four (4) years as part of the *Agreement*. While the Rider as proposed will remain in place longer than four (4) years, it is intended to recover only those amounts approved as part of the *Agreement*. Staff believes granting additional variances from Rules 4 CSR 240-20.093 (5)(A) and 4 CSR 240-20.093(2)(J) further effectuates the *Agreement* approved by the Commission.

13. Staff has verified that Ameren Missouri has submitted its 2012 calendar year annual report and is current on the payment of Commission assessments.

14. Staff is not aware of any matter that will affect, or will be affected by, a Commission decision in this case.

WHEREFORE, Staff recommends the Commission approve the tariff sheets submitted by Ameren Missouri and assigned Tracking No. YE-2014-0223 to become effective on January 27, 2014, and grant variances from Rules 4 CSR 240-20.093 (1)(N), 4 CSR 240-20.093(2)(I), 4 CSR 240-20.094 (1)(L), 4 CSR 240-20.093 (5)(A) and 4 CSR 240-20.093(2)(J) as described herein for good cause shown.

Respectfully submitted,

**STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 10th day of December 2013, to all counsel of record as listed in the Commission's Electronic Filing Information System.