BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)	
Complainant,	)	
vs.	)	File No. EC-2015-0315
Union Electric Company d/b/a Ameren Missouri,	)	
Respondent.	)	

AMEREN MISSOURI'S APPLICATION FOR REHEARING AND REQUEST FOR CLARIFICATION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), pursuant to § 386.500.1, RSMo.[1] and 4 CSR 240-2.160, and for its *Application for Rehearing and Request for Clarification* of the Commission's November 18, 2015 *Order Granting Staff's Motion for Summary Determination and Denying Ameren Missouri's Motion for Summary Determination* ("Order") in the above-captioned proceeding states as follows:

Application for Rehearing

Commission decisions must be lawful (i.e., the Commission must have statutory authority to do what it did) and must be reasonable. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n*, 103 S.W.3d 753, 759 (Mo. banc 2003); *State ex rel. Alma Tele. Co. v. Pub. Serv. Comm'n*, 40 S.W.3d 381, 387-88 (Mo. App. W.D. 2001). The decision is reasonable only if supported by competent and substantial evidence of record. *Alma*, 40 S.W.3d at 388. Moreover, Commission decisions must not be arbitrary, capricious, or unreasonable. § 536.140.1(6). The Commission is a creature of statute and it has only the powers conferred on it by the Legislature. *State ex rel. City*

[1] Statutory references are the Missouri Revised Statutes (2000), unless otherwise noted.

of St. Louis v. Pub. Serv. Comm'n, 73 S.W.2d 393, 399 (Mo. banc 1934). The Commission is bound by its administrative rules. *See, e.g.*, *State ex rel. Stewart v. Civil Serv. Comm'n*, 120 S.W.3d 279 (Mo. Ct. App. 2003).

1. The Commission has unlawfully disregarded its own rule by re-writing it.

The Order acknowledges that nothing whatsoever in the unanimous stipulation and agreement approved by the Commission on August 1, 2012 changed the terms of the original MEEIA plan with respect to how the utility incentive component of the DSIM was to be determined. Consequently, the Order concedes that *under the MEEIA plan and the stipulation*, avoided cost estimates are not to be updated and that the avoided cost estimates used in the original filing are to apply throughout the entire term of the DSIM, including when the utility incentive component is determined.

So how does the Order purport to avoid the express terms of the plan, which admittedly were not changed by the stipulation? It does so by changing the express and unambiguous terms of 4 CSR 240-20.093(1)(F) so that it now reads as follows (with the actual text of the rule stricken below):

> Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission and distribution facilities including avoided probable environmental costs. The utility shall use the same ~~methodology~~ **inputs** used in its most recently-adopted preferred resource plan to calculate its avoided costs.

Based upon its rule re-write, the Commission then concludes that since the Company did not obtain a waiver of 4 CSR 240-20.093(1)(F), its utility incentive component must be determined using the inputs underlying the preferred plan from its 2014 IRP. To be clear: the Order implicitly acknowledges that the red "X" in Table 2.12 in the MEEIA plan prohibits changing the avoided

cost estimates that were used for the MEEIA plan, and that it was not in any way modified by the stipulation, but the Commission nevertheless concludes that honoring the agreement of all of the parties – and of the Commission itself in approving the stipulation – is unenforceable because the agreement is at odds with the rule and because a waiver of the rule was not obtained.

The Commission is patently wrong as a matter of law because "inputs" and a "methodology" are not the same.[2] The most pertinent portion of the definition of "input" from *Merriam Webster's Collegiate Dictionary* is that an input is "information fed into a data processing system or computer." An "input" is also defined as "the act of putting in" and "what is put in." *Id.* One does not "put a method in" a method, and a method is not "what is put in." Data, numbers are "put in" and they are "put in" the method; the formula.[3]

There is absolutely nothing in these definitions that supports the conclusion that a "methodology" or a "method" are the same thing as an "input." It's that simple, the Commission has re-written its definition of avoided costs by substituting "input" for "methodology" and it has done so unlawfully.

This is confirmed by reference to a thesaurus. Synonyms for "methodology" include "procedure, program, approach, how, manner, recipe, technique and way."[4] Several of the synonyms for "method" are quite similar: "approach, fashion, how, manner, methodology, and recipe"[5] and "procedure" and "process."[6] The procedure, approach, recipe, process for determining the net benefits was specified in Table 2.12 of the plan, and it plainly provides that six of the items that are "put in" the methodology remain fixed while three are

[2] Notably, the Order completely fails to explain how the Commission reached its conclusion that the inputs and the methodology are the same. Instead, the Order just says as much.
[3] *Webster's* also tells us that a "methodology" is a "system of methods." *Webster's* further tells us that a "method," from which the word "methodology" is derived, is a "procedure, process."
[4] *Merriam-Webster's Online Thesaurus.*
[5] *Id.*
[6] *Oxford Dictionaries*, Oxford University Press.

updated. The Order indicates that the Commission fully understands the difference, but to achieve the result it apparently desired to achieve (lower net benefits and lower utility incentive component of the Company's DSIM), it ignored it.

That the Commission understands the difference is evidenced by statements on page 4 of the Order, where the Commission observes that the "formula used in the method did not change," indicating instead that the "numbers changed." What the Commission overlooks is that the "method" and the "formula" are one in the same, as evidenced by the fact that a synonym for "formula" is "method."[7] A formula was not "used in" the method. The formula *is* the method. *Inputs* are "put in" formulas and methods, and under the plan some of those inputs could change, and some could not.

2. It is undisputed that the Company used the same methodology to determine avoided costs for its MEEIA plan filing, and for the determination of the net benefits to be used in the utility incentive component calculation.

The Commission also ignores the entire basis of the Company's Motion for Summary Determination ("Company's Motion") and reaches conclusions in this case that are directly contradicted by the undisputed material facts. Paragraphs 30 – 32 and 34 of the Company's Motion establish both *what* the methodology for determining avoided costs is, and establish that the *same methodology* was used in both its 2011 and 2014 IRP filings. Those facts were admitted by all parties and thus, as matter of law, they are undisputed for purposes of the Commission's ruling in this case. The Commission is not free to disregard those undisputed material facts and reach a conclusion based on a different set of facts.

[7] *Id.*

3. The Commission's re-write of 4 CSR 240-20.093(1)(F) is directly contradicted by other provisions of the MEEIA rules.

The Order has now defined "methodology" to include the "inputs" because under the Order, the "methodology" and the "inputs" are the same. There is no escaping this conclusion because the Commission has now ruled that "same methodology as used in its most recently-adopted preferred resource plan" means the preferred plan last filed before the subject net benefit calculation is being performed. This is how the Commission reaches the result that requires the Company to use the avoided cost values/inputs it used in its 2014 IRP when calculating net benefits for its utility incentive component. If the Order concluded otherwise, then "most recent" would, as the Company argues, refer to the methodology used in the IRP last filed before the MEEIA plan at issue was approved; that is, the 2011 IRP.

4 CSR 240-20.093(1)(EE) proves the Commission erred when it concluded that the "methodology" and the "inputs" are the same. 4 CSR 240-20.093(1)(EE) defines the utility incentive component of the DSIM as "the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports." If "methodology" includes the inputs, as the Commission has concluded in the Order,[8] then not only is the methodology (which the Commission concludes is a formula that does not change) locked-in when the utility incentive component was approved, but so too must be the inputs, because the methodology, the inputs and the formula are, according to the Order, one in the same. If "methodology" in 4 CSR 240-20.093(1)(F) includes the inputs, then "methodology" in 4 CSR 240-20.093(1)(EE) *also includes* the inputs, which means it would have to read as follows (original language stricken; new language **underlined/bold**):

[8] At the Staff's urging: the methodology "necessarily encompasses the formula, the inputs, and the results of the calculation." Staff's Response to Ameren Missouri's Motion for Summary Determination, p. 9.

> the ~~methodology~~ **inputs** approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports.

Consequently, the utility incentive component of the DSIM approved by the Commission back in 2012, and which is binding on the Commission and the Company and customers the entire term of its operation, consists of the "inputs approved by the Commission" in Ameren Missouri's MEEIA plan filing. The Commission didn't approve the MEEIA filing in this complaint case; it approved it in 2012, and under its definition of "methodology" it approved the inputs because they are one in the same, or so says the Order.

Those inputs could *only have been those from the 2011* IRP, because it was impossible for the inputs to be from the 2014 IRP *at the time the plan was approved in 2012* *because the 2014 IRP did not yet exist*. The Order has thus proven what the Company has said all along: a MEEIA plan is approved, and the methodology used to determine avoided cost estimates used in the MEEIA plan filing must be from the last IRP's preferred plan before the MEEIA plan filing is made and, throughout the operation of the plan, that same methodology must be used. Consequently, in the context of this case, had the Company used a different methodology to determine avoided cost estimates for its 2014 IRP it could not have implemented that new methodology in its already-approved and still-operating MEEIA plan, because the methodology was approved in 2012 when the MEEIA plan was approved.

The Commission cannot have it both ways. "Methodology" either is a process, a procedure, or it is the inputs that are "put in" the formula; the methodology. If it is the latter – and the Order says it is – the Commission locked those inputs in in 2012 because 4 CSR 240-20.093(1)(F) says so. Yet if that is so, the Order is at odds with 4 CSR 240-20.093(1)(F), rendering it unlawful.

4. The Commission erred in several other ways.

- The Commission attempts to justify the result it reaches by arguing that the utility incentive component must be connected to how much money "ratepayers actually saved." Order, p. 5. The undisputed material facts are that all of the "avoided costs" at issue are long-term (i.e., 20-year, forward-looking) *estimates* that change all of the time, and that will change many more times over the life of the demand-side measures installed under the MEEIA plan at issue in this case. We will never know what "ratepayers actually saved" and we certainly don't know that now.
- The Commission attempts to justify its Order by interpreting methodology "in the context of this rule." Order, p. 5. The rule is not ambiguous; it must be applied according to its plain and ordinary meaning. For the reasons given above, under the plain and ordinary meaning of "methodology," the avoided cost estimates cannot be changed when determining the net benefits.
- The Commission also attempts to justify the Order by discussing what it views as the purpose of the utility incentive component: to provide an earnings opportunity in the future in lieu of earnings that the Company might realize if it built supply-side resources instead of operating demand-side programs. It then indicates that the earnings on supply-side resources are dependent on energy and capacity prices in the market. Particularly in a situation where the utility, as here, has a fuel adjustment clause that tracks 95% of the changes in energy and capacity costs and revenues, the earnings on supply-side investments depends largely on the cost of

equity over the long lives of those assets and only minimally on changes in market prices.

- The plan itself (see pages 25-30), which was not changed by the stipulation, confirms that the utility incentive component was designed to produce a particular *dollar amount* depending on the percentage of the MWh targets that was actually achieved by the Company. The reason it was designed to produce a *dollar amount* is because of its purpose – to act as a proxy for foregone earnings (in dollars) arising from avoided or delayed investments in infrastructure, *just as the Order recognizes*. In order to produce the dollar amounts needed to neutralize the lost infrastructure-related earnings that would not materialize because of the energy efficiency programs, a percentage of net benefits, *based on the avoided cost estimates that underlie the plan*, had to be determined at various performance levels and that is what was approved by the Commission when it approved the plan. If different avoided cost estimates must now be used (and the Order says they must), then the only way to achieve the purpose of the utility incentive component – the purpose the Order itself recognizes – is to take these new "inputs" and plug them into the formula used to determine what percentage of net benefits is needed to produce the dollars needed to cover the foregone earnings at various performance levels because the dollar values are based on foregone earnings. They have nothing to do with the percentages.
- The Commission also ignored the fact that its interpretation of its rule (which it was not entitled to do except according to its plain meaning) leads to illogical and absurd results. That is, it makes absolutely no sense for the Commission to require a host

of information that depends on the avoided cost estimates that underlie the MEEIA plan filing, and to then decide whether to approve the MEEIA plan filing based on that information, if in fact different avoided cost estimates will later be substituted. And it makes no sense for a utility incentive component to depend on the lottery that energy and capacity market prices create – since they are beyond the utility's control – and this is particularly true if, as the Commission indicates, the purpose of the utility incentive component is to provide earnings opportunities to replace those lost from less investment (or delayed investment) in supply-side resources. The law teaches that rules, just as are statutes, are to be interpreted in a manner that avoids illogical and absurd results. *Knob Noster Educ. v. Knob Noster R-VIII Sch. Dist.*, 101 S.W.3d 356 (Mo. Ct. App. 2003) (Statutes are to be interpreted to avoid illogical or absurd results); *Tate v. Dir. of Revenue*, 982 S.W.2d 724, 728 (Mo. App. E.D. 1998) (Administrative rules are interpreted using the same rules as applied when interpreting statutes). The Commission's interpretation leads to just such results, and thus violates these basic legal principles.

Motion for Clarification

If the Commission determines it must deny Ameren Missouri's rehearing request, it should clarify the starting date for use of the new avoided cost estimates that underlie the preferred resource plan reflected in its 2014 IRP (File No. EO-2015-0084). Ameren Missouri selected a new preferred plan at the time it filed the 2014 IRP, on October 1, 2014. Prior to that date, the avoided cost estimates underlying its in-effect preferred plan were those from its 2011 IRP. Consequently, updated avoided cost estimates for use in calculating the performance incentive arising from MWhs saved prior to that date did not exist, meaning the performance incentive calculation arising from

those MWhs should be based on the avoided cost estimates that underlie the preferred resource plan still in effect until October 1, 2014. If rehearing is not granted, the Company asks the Commission to clarify that the new avoided cost estimates are not to be used except for MWhs saved on and after October 1, 2014.

WHEREFORE, Ameren Missouri requests the Commission to enter its order granting rehearing in this matter, and based upon the undisputed material facts in this case, to grant the Company summary disposition of this case by dismissing the Staff's complaint with prejudice or, in the alternative, to clarify that the later avoided cost estimates are not applicable to the MWhs saved prior to October 1, 2014.

Respectfully submitted,

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Dated: December 17, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 17th day of December, 2015, served the foregoing document and its attachment either by electronic mail, or by U. S. Mail, postage prepaid addressed to all parties of record.

/s/ James B. Lowery
James B. Lowery