BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

MISSOURI DIVISION OF ENERGY'S APPLICATION FOR REHEARING

COMES NOW Missouri Department of Economic Development--Division of Energy ("DE" or the "Division") and, pursuant to § 386.500.1, RSMo.,1 and 4 CSR 240-2.160, respectfully applies for rehearing of the Commission's *Order Granting Staff's Motion for Summary Determination, and Denying Ameren's Motion for Summary Determination* in the above-captioned proceeding which was issued November 18, 2015 ("Order"), and for its Application for Rehearing states as follows:

1. 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 of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934).

2. A review of the evidentiary record in this case and applicable law demonstrates that the Commission's Order fails to comply with the above-referenced legal principles with respect to the Commission's determination of the issues presented.

3. The Commission's Order is unlawful, unreasonable, and an abuse of discretion in that it fails to apply the appropriate legal standard for interpreting Commission regulation 4 CSR 240-20.093(1)(F), and Commission's finding of facts are contrary to the competent and substantial evidence in the record.

4. When interpreting Commission regulations the rules of statutory interpretation must be applied. *State ex rel. Office of Public Counsel v. Missouri Public Service Commission*, 301 S.W.3d 556, 565 (Mo. App. W.D. 2009); citing, *Morton v. Mo. Air Conservation Comm'n*, 944 S.W.2d 231, 238 (Mo.App.1997). The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue. *State ex rel. Union Electric Company v. Publice Service Commission of Missouri*, 399 S.W.3d 467, 480 (Mo App. W.D. 2013); citing, *Parktown Imports, Inc., v. Audi of Am., Inc.,* 278 S.W.3d 670, 672 (Mo. banc 2009). Absent a definition in statute or regulations, the word's plain and ordinary meaning should be derived from the dictionary. *State ex rel. Public Counsel v. Public Service Comm'n or State*, 397 S.W.3d 441, 451 (Mo. App. W.D. 2013); citing, *State ex rel. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n* 331 S.W.3d 677, 688 (Mo. App. W.D. 2011). If the intent of the

legislature is clear and unambiguous, by giving the language used in the statute the plain and ordinary meaning, then the language must be given the plain and ordinary meaning without any additional statutory construction in the process of interpretation. *State ex rel. Union Electric Company v. Public Service Commission of Missouri*, 399 S.W.3d 467, 479 (Mo. App. W.D. 2013); citing, *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011). The primary rule of statutory interpretation is only tempered by the overriding rule that construction of a statute should avoid unreasonable or absurd results. *State ex rel. Union Electric Company v. Public Service Commission of Missouri*, 399 S.W.3d 467, 481 (Mo. App. W.D. 2013); citing, *Aquila Foreign Qualifications Corp. v. Dir. of Revenue*, 362 S.W.3d 1, 4 (Mo. banc 2012). In determining whether a particular interpretation leads to an unreasonable or absurd result, the primary concern is whether the particular interpretation would make the provision unlawful. *Id.* at 482.

5. The Commission, in its Order found that the word "methodology" as it appears in 4 CSR 240-20.093(1)(F), "includes both the formula by which avoided costs are to be calculated and the inputs used in that formula." *Order*, p. 5. The Commission came to this conclusion in spite of the evidence presented by both the Division and Ameren Missouri that the dictionary defines methodology as "a procedure or set of procedures" and does not include the numerical inputs used in that procedure or formula. *Missouri Division of Energy's Reply to Responses to Motions for Summary Determination,* pp. 5-6; *Ameren Missouri's Memorandum of Law*, pp. 8-10. Neither the MEEIA statute nor the Commission's rules

implementing MEEIA define "methodology" differently; therefore, the Commission is obligated to interpret the legislative intent by deriving the plain and ordinary meaning of "methodology" from the dictionary. The dictionary definition of "methodology' makes clear and unambiguous that Ameren Missouri must use the same process or processes, used in its most recently adopted preferred resource plan to calculate its avoided costs, but is not required to use the same numerical inputs. Since the intent of the legislature is clear and unambiguous when the word "methodology" in 4 CSR 240-20.093(1)(F), is given its plain and ordinary meaning as derived from the dictionary the Commission is obligated to give the word "methodology" the plain and ordinary meaning without any additional statutory construction, unless the plain and ordinary meaning leads to an unreasonable or absurd result. The plain and ordinary meaning of "methodology" as determined by the dictionary is unreasonable or absurd if the resulting regulation would be unlawful.

6. The Commission's Order did not make any finding of fact that the dictionary definition of "methodology" would cause 4 CSR 240-20.093(1)(F) to be unlawful. The Commission's Order does state that Staff's interpretation "is consistent with the goal of the MEEIA statute, which is to encourage the electric utility to implement energy-saving measures by protecting the utility's financial interests while also protecting consumers." However, the Order does not state what evidence in the record it relied on in coming to this finding of fact. Staff's only relevant argument was that the plain and ordinary meaning of "methodology" as defined in the dictionary would be unreasonable because "the costs that Ameren

Missouri has avoided through its Cycle 1 MEEIA program are not as great as they were initially expected to be." *Staff Response to Ameren's Motion for Summary Determination*, p. 3. Staff however never indicated which provision of the MEEIA statute would render this result unlawful. To the Contrary, the Division stated that, "Staff's interpretation of Commission Rule 4 CSR 240-20.093(1)(F), would lead to illogical and absurd results because this interpretation would make the utility performance incentive largely dependent on inevitable and uncontrollable yearly fluctuations in energy prices…" *DE Reply,* p. 3. Similarly, Ameren Missouri stated that Staff's interpretation would turn the utility performance incentive into a energy cost lottery, where even if the Company did a good job of controlling program costs and did a good job of deploying measures that saved a lot of energy the utility performance incentive would be significantly influenced by the operation of national power markets, which the utility has no control over. *Ameren Missouri Memorandum of Law*, p. 14.

7. Since the term "methodology" as it is used in 4 CSR 240-20.093(1)(F) does not make the rule unlawful when the word is given its plain and ordinary meaning of being a process or group of processes, as defined by the dictionary the Commission is obligated to conclude that the term "methodology" does not include the numerical inputs used by a utility to calculate its avoided costs in the utility's most recent IRP.

8. The Commission's Order is contrary to the competent and substantial evidence in the record in that the Commission based its interpretation on the assertion that

the goal of the MEEIA statute, "is to encourage the electric utility to implement energy-saving measures by protecting the utility's financial interests while also protecting consumers." As previously stated, the Commission's Order made no reference to any evidence in the record supporting this finding of fact.

9. In fact the MEEIA statute makes no reference to utility or customer protection, but rather states, "It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure…In support of this policy, the commission shall… Ensure that utility financial incentives are aligned with helping customers use energy more efficiently…" RSMo § 393.1075. Despite the lack of any specific mention of customer or utility protection in the MEEIA statute, the Commission's interpretation of 4 CSR 240-20.093(1)(F), actually reduces customer and utility financial protections and makes the utility performance incentive largely dependent on inevitable and uncontrollable yearly fluctuations in energy prices. *DE Reply*, p. 3. Agreeing on the avoided costs that will be used in the procedure for determining a utilities earnings opportunity at the outset—like a hedge—protects both the customers and the utility from significant fluctuations in energy market prices. While the Commission's Order does not indicate what evidence in the record supports a finding that Staff's interpretation of "methodology" will protect both customers and utilities, both the Division and Ameren Missouri presented evidence that Staff's interpretation of "methodology" would in fact misalign a utility's financial incentives with helping its customers use energy more

efficiently. For these reasons the Commission's Order is contrary to the competent and substantial evidence in the record.

WHEREFORE, DE respectfully files its *Application for Rehearing* and requests the Commission to enter its order granting rehearing in this matter, and to grant the Ameren Missouri summary disposition of this case by dismissing the Staff's complaint for the reasons set out herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been emailed to the certified service list this 17th day of December, 2015.

/s/ Alexander Antal