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February 4, 2016

Mr. Morris Woodruff
Secretary of the Commission
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65203-0360

FILED
FEB 5 2016
Missouri Public
Service Commission
2:35pm MA

Re: Case No. EC-2015-0315, Notice of Appeal

Dear Mr. Woodruff:

Enclosed for filing please find an original and three copies of a Notice of Appeal, filed with your office pursuant to the provisions of Section 386.510, RSMo. I ask that you mark the notice as having been filed in your office on this date, including the third copy for our file, and return in the enclosed postage-prepaid envelope.

Also enclosed is our office check in the amount of $70 to cover the docket fee required by Supreme Court Rule 81.04(d).

Should you have any questions please contact me at the address or telephone number listed above, or via e-mail at the e-mail address listed next to my signature. Thank you for your assistance.

Sincerely,

James B. Lowery
lowery@smithlewis.com

Enclosures
c: Counsel of Record, Case No. EC-2015-0315 (via certified mail, return-receipt requested)
Wendy Tatro

Missouri Public Service Commission

FILED

FEB 5 2016

Missouri Public Service Commission
2:35pm MA

(Date File Stamp)

Judge or Division: Regulatory Law Judge Morris Woodruff	Appellate Number:
Appellant: Union Electric Company d/b/a Ameren Missouri vs.	Missouri Public Service Commission File Number: EC-2015-0315
Respondent: Public Service Commission of the State of Miss	

Notice of Appeal

Notice is given that Union Electric Company d/b/a Ameren Missouri appeals to the Missouri Court of Appeals ☒ Western ☐ Eastern ☐ Southern District.

2/5/16
Date Notice of Appeal Filed
(to be filled in by Secretary of Commission)

Signature of Attorney or Appellant

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney.

CASE INFORMATION

Appellant Name / Bar Number:	Respondent's Attorney / Bar Number:
James B. Lowery, MO Bar #40503	Shelley Brueggermann, MO Bar #52173
Address: Smith Lewis, LLP P.O. Box 918 Columbia, MO 65205-0918	Address: Missouri Public Service Commission P.O. Box 360 Jefferson City, MO 65102
Telephone: 573-443-3141 Fax: 573-442-6686	Telephone: 573-751-7393 Fax: 573-751-9285

Date of Commission Decision:	Date of Application for Rehearing Filed:	Date Application for Rehearing Ruled On:
November 18, 2015	December 17, 2015	January 30, 2015

DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be mailed to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

Certificate of Service

I certify that on February 4, 2016 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

See Civil Case Information Form, attached hereto.

Appellant or Attorney for Appellant

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CIVIL CASE INFORMATION FORM
(This form must be filed with the Notice of Appeal)

List every party involved in the case, indicate the position of the party in the circuit court (e.g., plaintiff, defendant, intervenor) and in the Court of Appeals (e.g., appellant, respondent) and the name of the attorney of record, if any, for each party. Attach additional sheets to identify all parties and attorneys if necessary.

Party	Attorney
Missouri Public Service Commission (Party as a matter of right per statute)	Shelley Brueggermann Missouri Public Service Commission 200 Madison Street, Suite 800 P.O. Box 360 Jefferson City, MO 65102-0360
Missouri Office of the Public Counsel (Party as a matter of right per statute)	Dustin J. Allison Missouri Office of Public Counsel 200 Madison Street, Suite 650 P.O. Box 2230 Jefferson City, MO 65102-2230
Missouri Department of Economic Development – Division of Energy (Intervenor)	Alexander Antal P.O. Box 1157 Jefferson City, MO 65102
Union Electric Company d/b/a Ameren Missouri, (Appellant)	James B. Lowery, MoBar #40503 SMITH LEWIS, LLP 111 South Ninth Street, Suite 200 P.O. Box 918 Columbia, MO 65205-0918 Phone: (573) 443-3141 Fax: (573) 442-6686 Wendy K. Tatro, MoBar #60261 Union Electric Company P.O. Box 66149 St. Louis, MO 63166-6149 Phone: (314) 554-2514 Fax: (314) 554-4014

Date Notice filed with the Commission: February 4, 2016

The Record on Appeal will consist of:

X Legal File Only ____ Legal File and Transcript

FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action. Attach one additional page, if necessary).

The Missouri Public Service Commission issued an *Order Granting Staff's Motion for Summary Determination and Denying Ameren Missouri's Motion for Summary Determination* in the case appealed hereby, in Commission Case No. EC-2015-0315, on November 18, 2015. The Order, if upheld, will result in losses for Appellant totaling approximately $3,000,000. On December 17, 2015, Appellant timely filed its Application for Rehearing, which was denied by the Commission by Order effective January 30, 2016, precipitating this appeal.

This case arises from a complaint filed by the Commission's Staff alleging that Appellant failed to follow the Commission's administrative rules governing the development of "avoided cost" estimates that are used to determine a share of net benefits produced by energy efficiency programs implemented by Appellant under the Missouri Energy Efficiency Investment Act ("MEEIA"). The gravamen of the Staff's complaint was that inputs used when Appellant filed its 2014 Integrated Resource Plan (filed October, 2014) must also be used to determine net benefits arising from Appellant's operation of its MEEIA energy efficiency plans in 2014 and 2015, and that Appellant instead used inputs arising from its 2011 Integrated Resource Plan, which was the last Integrated Resource Plan prepared and filed prior to implementation of the MEEIA energy efficiency programs at issue.[1] Under the Commission-approved MEEIA plan, Appellant receives a share of net benefits to provide it an earnings opportunity (as called for by MEEIA) to replace lost earnings caused by pursuit of energy efficiency programs instead of the construction of supply-side resources or other utility infrastructure.

Appellant contends the Commission erred in several respects. First, the Commission erred in ruling that new inputs from the 2014 Integrated Resource Plan must replace those that underlie the MEEIA plan approved by the Commission in that the Commission completely disregarded the express, plain language of its own rule, effectively rewriting it by substituting the word "inputs" for the word "methodology." The rule provides that the "same methodology" shall be used; it does not provide that the same "inputs" will be used. An "input" and a "methodology" are plainly not the same thing, and it is undisputed that Appellant used the same methodology for its 2011 and 2014 Integrated Resource plans and its MEEIA plan.

Second, all parties, including the Staff, admitted as an undisputed material fact that the same methodology was used by Appellant. The Commission was not free to disregard this admission.

Third, aside from the disregard of the term "methodology" in the definition of "avoided cost" in its rule, the Commission's decision is directly contradicted by other provisions of its MEEIA rules. The Commission also erred in other ways set forth in Appellant's Application for Rehearing.

[1] Appellant's MEEIA energy efficiency programs were approved by the Commission in 2012, and were to be operated for a three-year cycle, from 2013 to 2015.

ISSUES EXPECTED TO BE RAISED ON APPEAL: (Attach one additional page, if necessary. Appellant is not bound by this list. Attach one copy of the post-trial motion, if one was filed).

1. Whether the Commission's Order was unlawful because of its failure to follow the Commission's duly-enacted and effective administrative rules.
2. Whether the Commission's Order was unreasonable because of the incorrect interpretation by the Commission of its administrative rules.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 18th day of November, 2015.

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

ORDER GRANTING STAFF'S MOTION FOR SUMMARY DETERMINATION, AND DENYING AMEREN MISSOURI'S MOTION FOR SUMMARY DETERMINATION

Issue Date: November 18, 2015 Effective Date: December 18, 2015

Procedural History

On June 1, 2015, the Staff of the Commission filed a complaint against Union Electric Company, d/b/a Ameren Missouri. The complaint alleges that Ameren Missouri failed to comply with the requirements of Commission Rule 4 CSR 240-20.093(1)(F). Specifically, the complaint alleges that Ameren Missouri failed to provide its independent evaluation, measurement and verification (EM&V) contractors with the most recent avoided cost information needed for the calculation of the portion of the annual net shared benefits that are to be awarded to Ameren Missouri as a performance incentive as a result of the

energy efficiency savings the company has achieved from its Missouri Energy Efficiency Investment Act (MEEIA) demand-side programs for Program Year 2014.

Ameren Missouri filed a timely answer to the complaint, and the Missouri Department of Economic Development – Division of Energy was allowed to intervene. The parties agreed that there are no factual issues in dispute and that the complaint could be resolved through cross-motions for summary determination. Staff and Ameren Missouri filed their respective motions for summary determination on August 28. Staff, Ameren Missouri, and the Office of the Public Counsel filed written responses to the motions for summary determination on September 16. Staff, Ameren Missouri and the Division of Energy filed written replies to those responses on September 25. All four parties participated in an oral argument before the Commission on October 2.

Findings of Fact

The following undisputed facts are taken from the Complaint, Ameren Missouri's Answer, Staff's motion for summary determination, and from Ameren Missouri's motion for summary determination.

1. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

2. Ameren Missouri is a wholly-owned subsidiary of Ameren Corporation, a publicly-traded utility holding company. Its principal place of business is One Ameren Plaza, 1901 Chouteau, St. Louis, Missouri, 63103.

3. Ameren Missouri made its first filing for approval of a three-year demand-side program plan under MEEIA on January 20, 2012, in Commission File No. EO-2012-0142.

That plan was not adopted as filed, but rather was modified by terms of a unanimous stipulation and agreement approved by the Commission on August 1, 2012.

4. As part of the modified MEEIA plan, the Commission approved a demand-side investment mechanism – a DSIM - designed to allow Ameren Missouri to recover its MEEIA-related costs in a timely fashion.

5. Ameren Missouri's DSIM allows it to recover its revenue requirement from its customers through a separately-stated DSIM rate that can be adjusted periodically outside of a general rate case. The DSIM revenue requirement is the sum of three components: the DSIM cost recovery revenue requirement; the DSIM utility lost revenue requirement; and the DSIM utility incentive revenue requirement. Of the three components, only the utility incentive revenue requirement is at issue in this complaint.

6. The DSIM utility incentive revenue requirement is "the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits ... ."[1] The calculation of the utility incentive revenue requirement is based on the performance of demand-side programs approved by the Commission and includes a methodology for determining the utility's portion of annual net shared benefits achieved and documented through EM&V reports for approved demand-side programs. In other words, Ameren Missouri is entitled to recover a portion of the annual benefits that result from implementation of the approved demand-side programs. One element in the calculation of those annual benefits is the utility's avoided costs.

7. The Commission's regulation defines avoided costs as:

> [t]he costs savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided

[1] Commission Rule 4 CSR 240-20.093(1)(Q).

> utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. **The utility shall use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs.** (emphasis added)[2]

The emphasized sentence is at the heart of the Staff's complaint against Ameren Missouri.

8. Avoided costs are an estimate of future costs over at least a 20-year period. At the time Ameren Missouri's DSIM was created, that estimate of avoided costs was based on the methodology used in the preferred resource plan set forth in Ameren Missouri's MEEIA 1 Plan. Ameren Missouri made its next Chapter 22 Electric Utility Resource Planning Rules triennial IRP filing in 2014. For the 2014 IRP filing, the formula used in the methodology did not change, but the numbers plugged into the formula used to estimate avoided costs did change. As a result, the estimate of avoided costs also changed.

9. EM&V, as performed by Ameren Missouri's contractors, does not calculate or otherwise determine the avoided costs used to calculate net shared benefits. Instead, the avoided cost estimates are provided to the EM&V contractors by Ameren Missouri. When Ameren Missouri provided the estimate of avoided costs to its independent EM&V contractors for program year 2014, it gave them the estimated avoided costs as calculated using the inputs from the 2012 MEEIA 1 Plan methodology, not the estimated avoided costs calculated using the inputs from the 2014 IRP methodology. Staff asked Ameren Missouri to provide the avoided cost estimates using the inputs from the 2014 IRP methodology to the EM&V contractors, but Ameren Missouri refused to do so, contending

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[2] Commission Rule 4 CSR 240-20.093(1)(F).

that the DSIM established in the 2012 stipulation and agreement does not require the use of updated avoided costs estimates.

10. Indeed, the DSIM as proposed by Ameren Missouri in its 2012 MEEIA filing, specifically subsection 2.6 and Table 2.12 of that filing, does not allow for the use of updated avoided cost estimates. However, paragraph 4 of the stipulation and agreement indicates Ameren Missouri's demand-side program is to be approved, subject to the terms and conditions of the stipulation and agreement. While paragraph 23 of the approved stipulation and agreement provides for variances from several rules that would otherwise be inconsistent with the provisions of the stipulation and agreement, subsection 4 CSR 240-20.093(1)(F) is not one of the rules from which a variance is provided. Therefore, Ameren Missouri's approved demand-side program remains subject to the requirements of that regulation, and Ameren Missouri is required to "use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs".

11. The Commission finds that in the context of this rule, methodology includes both the formula by which avoided costs are to be calculated and the inputs used in that formula. That 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. To accomplish that purpose, the company's performance incentive must be connected to how much money ratepayers actually saved as a result of the company's MEEIA program. Therefore, to the greatest extent possible, the Commission encourages the use of actual numbers to calculate cost savings. In this case, that requires the use of updated estimates.

Conclusions of Law

A. Ameren Missouri is in the business of generating, transmitting and distributing electricity to customers for light, heat and power, and is thus an "electric corporation" and a "public utility" as defined in subsections 386.020(15) and (43), RSMo (Cum. Supp. 2013). As such, Ameren Missouri is subject to the regulatory jurisdiction of this Commission under Chapters 386 and 393, RSMo.

B. The Commission has jurisdiction over this matter because it involves Ameren Missouri's obligations under MEEIA, a statute that the Commission is charged to administer.[3] Ameren Missouri's obligations regarding its MEEIA programs for Program Years 2013 through 2015 are set forth by the Commission's rules and orders issued by the Commission in 2012 and 2013 accepting a stipulation and agreement and ordering the signatory parties to comply with the terms of that stipulation and agreement.

C. Section 386.390.1, RSMo 2000, authorizes the Commission to hear and decide complaints "setting forth any act or thing done or omitted to be done by any corporation, person or public utility ... in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission ..."

D. Commission Rule 4 CSR 240-2.070(1) authorizes Staff Counsel to file a complaint before the Commission.

E. Sections 386.570 and 386.590, RSMo 2000, provide that public utilities that fail to obey any law or rule or order of the Commission are subject to a penalty of not less than $100 or more than $2,000 for each offense. Section 386.600, RSMo 2000, provides

[3] Section 393.1075.4, RSMo (Cum. Supp. 2013).

that the Commission's general counsel may bring an action in any circuit court of this state to recover such penalties.

Decision

The sole purpose of a performance incentive under MEEIA is to give the utility an earnings opportunity that will place shareholders in a financial position comparable to the earnings opportunity they would have had if those shareholders had instead made a future supply-side investment. Future earnings opportunities from supply-side investments are dependent on the dynamic character of the energy marketplace. If energy and capacity market prices increase, the utility may be able to earn greater profits. Conversely, if those market prices drop, the utility may be able to earn less profit on its investment. Thus, it is appropriate that the calculation of the utility's performance incentive should reflect the most current market price information available when avoided costs are calculated. That is the result obtained when the requirements of Commission Rule 4 CSR 240-20093(1)(F) are interpreted correctly, as described in Staff's complaint.

As a result, the Commission will grant Staff's motion for summary determination, and deny Ameren Missouri's motion for summary determination. Consistent with Staff's complaint, the Commission will order Ameren Missouri to provide its independent EM&V contractors with the most recent avoided cost information needed for the calculation of the portion of the annual net shared benefits that are to be awarded to Ameren Missouri as a performance incentive as a result of the energy efficiency savings the utility has achieved from its MEEIA demand-side programs for Program Year 2014.

Staff's complaint also asks the Commission to authorize its General Counsel to proceed to Circuit Court to seek financial penalties against Ameren Missouri. The

Commission will not authorize that proceeding. There is no need to seek to penalize Ameren Missouri for its different interpretation of the regulation. Future compliance is sufficient.

THE COMMISSION ORDERS THAT:

1. Staff's Motion for Summary Determination is granted.

2. Ameren Missouri's Motion for Summary Determination is denied.

3. This order shall be effective on December 18, 2015.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
and Coleman, CC., concur.
Rupp, C., dissents.

Woodruff, Chief Regulatory Law Judge

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

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[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

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 20th day of January, 2016.

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

ORDER REGARDING REQUESTS FOR REHEARING AND CLARIFICATION

Issue Date: January 20, 2016 Effective Date: January 30, 2016

On November 18, 2015, the Commission issued an order granting Staff's motion for summary determination and denying Union Electric Company, d/b/a Ameren Missouri's motion for summary determination regarding Staff's complaint against Ameren Missouri. The Commission's order became effective on December 18.

On December 17, the Missouri Department of Economic Development – Division of Energy filed an application for rehearing. Ameren Missouri filed a separate application for rehearing on the same date. Ameren Missouri also requested clarification of a provision within the Commission's order.

Section 386.500.1, RSMo 2000 provides that the Commission may grant a request for rehearing, "if in its judgment sufficient reason therefor be made to appear". In the judgment of the Commission, neither the Division of Energy nor Ameren Missouri has shown sufficient reason to rehear the order resolving Staff's complaint. Those motions will be denied.

Ameren Missouri also requests clarification of one aspect of the Commission's order. The Commission's order required Ameren Missouri to provide its independent EM&V contractors with the most recent avoided cost information needed for the calculation of the portion of the annual net shared benefits that are to be awarded to Ameren Missouri as a performance incentive as a result of the energy efficiency savings the utility has achieved from its MEEIA demand-side programs for Program Year 2014. During that program year, the most recent avoided cost information changed when Ameren Missouri selected a new preferred resource plan on October 1, 2014, when it filed its 2014 IRP. Before that time the avoided cost information was based on its 2011 IRP filing. Ameren Missouri asks the Commission to clarify that the avoided cost estimates used to calculate the performance incentive arising from MWhs saved before October 1, 2014 should be measured against the standards found in the 2011 IRP filing rather than the 2014 IRP filing.

Staff responded to Ameren Missouri's request for clarification by arguing 1) that the approach proposed by Ameren Missouri would be overly complicated, 2) would increase the amount of costs recovered from ratepayers, and 3) would have a minimal impact on the 2014 Performance Incentive amount. Ameren Missouri replied to Staff by arguing that the company knows, from month to month, which measures have been

installed. As a result, it is easy to segregate the measures installed before and after October 1, 2014, and it is a straightforward calculation to determine the lifetime savings from those measures. Ameren Missouri estimates that the impact to the 2014 Performance Incentive amount would be approximately $3 million.

The Commission finds that Ameren Missouri's request for clarification is reasonable. The calculation proposed by Ameren Missouri is not overly complicated, and the impact of that calculation is not trivial. Most importantly, the calculation proposed by Ameren Missouri is consistent with the Commission's finding that the performance incentive should be based on the market price available at the time avoided costs are calculated. It is reasonable that the 2014 IRP actual costs begin to apply to the calculation of net benefits only after the 2014 IRP was filed.

THE COMMISSION ORDERS THAT:

1. The Missouri Department of Economic Development - Division of Energy's Application for Rehearing is denied.

2. Union Electric Company, d/b/a Ameren Missouri's Application for Rehearing is denied.

3. Union Electric Company, d/b/a Ameren Missouri's Request for Clarification is granted.

4. This order shall be effective on January 30, 2016.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Woodruff, Chief Regulatory
Law Judge