

are:

- The Staff misunderstands that the Commission approved a DSIM for the Company that included a utility incentive component, also known as the performance incentive, and that utility incentive component (which under the Commission's MEEIA rules is itself a methodology for determining the utility's portion of NSB to be received as its performance incentive) by its express terms specifically prohibits the use of avoided cost estimates that differ from those used to calculate the NSB that underlie the Commission-approved MEEIA 1 Plan;
- The Staff misunderstands – and in effect seeks to change – the definition of “avoided costs” in the Commission's MEEIA rules. That definition, by its express terms, requires that the same methodology used to determine avoided cost estimates for the utility's most recent IRP preferred plan also be used to determine avoided cost estimates for a MEEIA Plan. However, the Staff substitutes the word “inputs”, which does not appear in the rule, for the word “methodology,” which does appear in the rule and is unlawfully re-writing the rule itself;
- The Staff's position, if adopted, would not only defy the MEEIA rules and the Commission-approved MEEIA 1 Plan, but would lead to illogical and absurd results because, among other reasons, it turns the award a utility can earn under a performance incentive mechanism into a lottery dependent largely on uncontrollable energy and capacity costs. If avoided cost estimates go down while a MEEIA plan operates (as has occurred in recent years), the utility would receive a far lower award regardless of demand and energy savings it can achieve, or how well it controlled its MEEIA program costs, yet if the opposite had happened (or happens later) the utility would receive a larger award, again,

largely independent of the energy and demand savings it achieved or how well it managed its MEEIA budget. Moreover, it makes no sense for the Commission to approve a three-year MEEIA Plan based upon cost-effectiveness test results and customer impact analyses dependent on one set of avoided cost estimates, and to then throw those cost estimates out simply because in the short term (a period of a couple of years) the estimates change, which happens all of the time. Notably, all avoided cost estimates are just that – estimates – and they are long-term (20 years or more) estimates that over time will likely go up, and down, and up, and down, again.

Argument

There is nothing in the Staff’s Motion that the Company’s Motion does not already address and rebut. The Staff’s Motion (including its Suggestions) is almost entirely a rehash of the allegations in the complaint. Before addressing those points the Staff makes with which the Company disagrees, we first address areas of agreement.

The Company agrees that summary disposition is appropriate because the material facts are not in dispute. The disagreement is that when the “law” (the Commission-approved MEEIA 1 Stipulation, including the DSIM and the Commission’s rules) is *applied* to the undisputed facts, the complaint is not well-founded and that the Company is entitled to summary disposition.

The Company agrees this case involves a utility incentive component,² and that a utility incentive component is based on the “performance of demand-side programs,” here the Company’s Commission-approved MEEIA 1 programs.³ As the MEEIA rule cited on page 10 of Staff’s Suggestions indicates, the utility incentive component of a DSIM “shall be implemented on a retrospective basis and all energy and demand savings used to determine utility incentive revenue

² Staff Suggestions at 9 (citing MEEIA rules that refer to the utility incentive component).

³ Staff Suggestions at 9.

requirement must be measured and verified through EM&V.”⁴ The Company agrees that the dispute here pertains to the “Performance Incentive Award” and that the Staff claims that the Company has provided the “incorrect inputs” to its EM&V contractors which, the Staff contends, is producing the wrong NSB and the wrong performance incentive award.⁵ The Company agrees that the calculation called for by ¶ 5.b.ii of the MEEIA 1 Stipulation, which the Staff quotes at page 12 of its Suggestions, is at issue, and agrees that ¶ 5.b.ii and Appendix B together with the MEEIA 1 Stipulation (the Staff includes Appendix B as Exhibit 1 to its Suggestions) defines the determination of NSB for the performance incentive award. As Appendix B/Exhibit 1 shows, the percentage of NSB the Company is to receive depends on energy savings achieved. Everyone agrees that the energy savings are being measured and verified through EM&V, retrospectively, and those measured and verified savings are then used to perform the calculations illustrated on Appendix B/Exhibit 1.

While we agree on several things, there are areas where we either do not agree or where the Staff points to provisions of MEEIA, or the MEEIA rules, that are simply not relevant to Ameren Missouri’s MEEIA 1 Plan or its DSIM.

First, while on the one hand acknowledging the standard for summary disposition (i.e., is a party entitled to a ruling in its favor under the applicable law?), the Staff attempts to create a new standard by claiming that the “public interest demands that Staff’s complaint be sustained.”⁶ The “public interest” demands that the Staff be held to the agreement it signed onto and that the Commission approved, and that the Commission’s rules be applied as enacted and not as the Staff seeks to re-write them.

⁴ 4 CSR 240-20.093(2)(H).3. Demand-savings play no role in determining the Company’s performance incentive award, although performance incentive awards that depend (in whole or in part) on demand savings could be developed.

⁵ Staff Suggestions at 13.

⁶ Staff Suggestions at 3.

Second, while much of the Staff’s description of what MEEIA and the MEEIA rules provide for (Staff Suggestions pp. 4 – 11) is accurate, much of the Staff’s discussion has nothing to do with the Commission-approved DSIM at issue here. For example, the Staff points out that only the program cost component of a DSIM could be included in a rider absent a waiver of one of the Commission’s MEEIA rules (4 CSR 240-20.093(4)). For the Company’s DSIM, the signatories, including the Staff, agreed that such a waiver should be granted and that all three cost components of the DSIM would be included in a rider (assuming the courts sanctioned us of a rider, which they did) and the Commission approved that waiver and the DSIM. Staff also spends two pages (pages 7 – 8) describing the MEEIA rules’ concept of “lost revenues.” However, “lost revenues,” as defined by the rules, are not part of the Company’s DSIM because of waivers that the signatories (Staff included) agreed to and the Commission approved. Instead, the signatories – Staff included – agreed that the throughput disincentive would be addressed through a separate mechanism that allows the Company to retain a different share of the net benefits – the “TD-NSB” mechanism reflected in the MEEIA 1 Report and the MEEIA 1 Stipulation.

Third, the Staff’s entire legal analysis to support the “Why Does Staff Win?” section of its Suggestions is simply wrong. The Staff’s entire complaint depends upon the Commission substituting the word “inputs” for the word “methodology” in the definition of “avoided costs” in the MEEIA rules. We will not repeat much of the discussion here because it is directly on point and the Commission can read it, but as explained in our Memorandum of Law in support of the Company’s Motion (in Section B, pp. 7 to 11), neither the MEEIA rules nor the plain meaning of the words “inputs” or “methodology” support the Staff’s novel argument. In fact, the rules and the plain meaning of those terms directly refute the Staff’s entire argument.

The irony is that the Staff implies that the Company is construing the MEEIA rules’ definition

of “avoided costs” in a manner other than the plain meaning of the terms the rule uses, and in fact admonishes the Commission that it must apply the rules as written because the rules are binding on it. Yet, the *only* party in this case that fails to apply the plain meaning of the rule *is the Staff*, who departs from the plain meaning by literally *changing the rules’ terms* to reach the result it seeks.

To repeat what we previously said:

A “utility incentive component” is a “*methodology* approved by the Commission . . . to allow the utility to receive a portion of annual net shared benefits . . .” (emphasis added).⁷ A “methodology” is “a particular procedure or set of procedures.”⁸ Subsection 2.6 of the Report which, as already explained, was not modified in any way pertinent to the issue here, provides for the procedure to be used to update the net benefits. Under that procedure, some items are updated; some are not. Avoided costs are not updated. That methodology – that procedure – was approved by the Commission when it approved the Stipulation that unquestionably reflected the DSIM (and the utility incentive component thereof) described in the Report, as modified by the Stipulation.⁹

An “input” is not a “methodology.”¹⁰

The rule, by its plain terms, requires that when a MEEIA plan is submitted the utility at issue must have used the same *method* to come up with the avoided costs estimates used in the calculations reflected in the MEEIA plan (e.g., TRC calculations, customer impact calculations, NSB calculations), as it used in its most recent preferred plan, with “most recent” referring to most recent preferred plan in place prior to the preparation of the MEEIA plan. This is the only thing that makes sense, and that this is the rule is borne out by the fact that this is *exactly* what the Company did. As Mr. Michels’ Affidavit explains, the same methodology was used to estimate avoided costs for the IRP preferred plan as was used for the MEEIA 1 Plan, but the resulting avoided cost estimates were different.¹¹ This was spelled-out explicitly in the MEEIA 1 Report.¹²

⁷ 4 CSR 240-20.093(1)(EE).

⁸ *Webster’s New World College Dictionary* (4th ed.).

⁹ Memorandum of Law in Support of Company’s Motion, p. 8.

¹⁰ *Id.*, pp. 8-9.

¹¹ Michels Affidavit, ¶¶ 12 and 13.



The Staff took no issue with the avoided cost estimates (i.e., the inputs, to use Staff’s preferred word) the Company used, as Mr. Kang’s testimony indicated.¹³

Finally, but perhaps most important of all, the DSIM agreed to by the Staff and approved by the Commission explicitly states that avoided cost estimates will not be updated. We addressed this point fully in Section A from pages 4 to 7 of the Memorandum of Law in support of the Company’s Motion and, perhaps unknowingly, the Staff reinforces the point in its motion.

As noted earlier, the Staff include an Exhibit 1 with its motion. Exhibit 1 is Appendix B to the MEEIA 1 Stipulation. Like Table 2.12 from the MEEIA Report (reproduced again below), Appendix B provides as follows “Actual net benefits are based on actual program costs for the three-year MEEIA plan and the actual net MWh savings as determined by EM&V.”¹⁴ This is what the Report indicates (and the Report set the terms of the DSIM and the utility incentive component in it, unless the Stipulation modified it (there was no modification)), and this is what the Stipulation indicated:

Table 2.12 shows the items associated with estimating net benefits and whether those items will be updated for purposes of assessing performance and benefits as part of the implementation process. Notice that *several items will not be updated*, so the focus remains on the cost of the programs and the number of measures implemented (emphasis added).¹⁵

Table 2.12 Description of Update Process¹⁶

Category	Update?	Description
Avoided Costs		The avoided energy, capacity, and T&D values are deemed
_____		The TRM provides the deemed values or protocols for all measures








¹² MEEIA 1 Report, p. 73.

¹³ File No. EO-2012-0142, EFIS Item No. 51, p. 2, l. 20 to p. 3, l. 1.

¹⁴ Appendix B, p. 2, footnote 1.

¹⁵ MEEIA 1 Report, p.38.

¹⁶ *Id.*

Measure Attributes		
DSMore Software		XLS Version 5.0.14, GCG Version 5.0.23
Number of Measures		The number of measures will be measured as part of the evaluation process
Program Admin. Costs		The direct program costs will be tracked
Measure Rebate Costs		Measure rebates are included in the direct program costs
Net-to-Gross Factors		The TRM provides the deemed values
Customer Opt-Out		The final performance goals shall be adjusted based on final opt-out estimates
Discount Rate		The discount rate shall remain 6.95%

The question, which was answered in the Company's Legal Memorandum to support its Motion, as supplemented herein, is "*Why does the Staff lose?*" The Staff loses because the Staff is wrong. The 20+ year estimates of avoided costs fell in the past couple of years. They could have risen. They will change again. But the Company fully complied with the Commission's MEEIA rules. It used avoided cost estimates for its MEEIA 1 Plan developed using the same methodology as used to produce avoided cost estimates for its preferred plan adopted most recently before the MEEIA 1 Plan was filed. Its EM&V contractors took updated installed measures information, updated program cost information, updated rebate cost information and updated opt-out information and, using the avoided costs the rules and the Stipulation said they should use, calculated NSB for the 2014 program year.

The Company lived-up to its end of the bargain. The Staff's Motion must be denied.

WHEREFORE, Ameren Missouri moves for an order of the Commission denying the Staff's Motion for Summary Disposition, and an order of the Commission granting the Company

summary disposition by dismissing the Staff's complaint with prejudice.

Respectfully submitted,

SMITH LEWIS, LLP

/s/ James B. Lowery

James B. Lowery, #40503
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
Lowery@smithlewis.com

Wendy K. Tatro, #60261

Director-Asst. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
Phone (314) 554-3484
Facsimile (314) 554-4014

amerenmissouriservice@ameren.com

**Attorneys for Union Electric Company
d/b/a Ameren Missouri**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of September, 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