

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	<u>Case No. EC-2015 - _____</u>
)	
Union Electric Company d/b/a Ameren Missouri,)	
)	
Respondent.)	

STAFF COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission and for its *Complaint*, states as follows:

Introduction:

1. This matter concerns the failure of Respondent Ameren Missouri (“AmMo”) to comply with the requirement of Commission Rule 4 CSR 240-20.093(1)(F) to provide its independent evaluation, measurement and verification 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 AmMo 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 (“PY”) 2014.

Complainant:

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

Respondent:

3. Union Electric Company, d/b/a Ameren Missouri (“AmMo”), is a wholly-owned subsidiary of Ameren Corporation, a publicly-traded utility holding company. Pursuant to the Missouri Secretary of State’s website, AmMo’s principal place of business is One Ameren Plaza, 1901 Chouteau, St. Louis, Missouri 63103. AmMo’s registered agent is Steven R. Brophy, 500 East Independence Drive, Union, Missouri 63084.

Jurisdiction:

4. AmMo is in the business of generating, transmitting and distributing electricity to customers for light, heat and power. AmMo is thus an “electric corporation” and a “public utility” as defined in § 386.020, (15) and (43), RSMo., and is subject to the regulatory jurisdiction of this Commission under chapters 386 and 393, RSMo.

5. The Commission has jurisdiction over the subject matter of this Complaint because it involves AmMo’s obligations under a statute administered by the Commission, the Missouri Energy Efficiency Investment Act (“MEEIA”) at § 393.1075, RSMo., under Commission rules,¹ and under Commission orders as described below. AmMo’s obligations to administer its MEEIA programs for PY 2013 – PY 2015 are set forth by the Commission’s aforesaid rules and are imposed by the Commission’s *Order Approving Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing and Approving Stipulation and Agreement Between Ameren Missouri and Laclede Gas Company*² and *Order Approving Second Stipulation and Agreement Settling the*

¹ Commission Rules 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094.

² The *Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing* is herein after referred to as the *2012 Stipulation* and the order approving it is referred to as the *2012 Order*; the *Second Stipulation and Agreement Settling the Program Year 2013 Change Requests* is hereinafter referred to as

Program Year 2013 Change Requests in Case No. EO-2012-0142. Each of these *Orders* directs AmMo to comply with the provisions of the stipulation and agreement the Commission approved.

6. Section 386.390.1, RSMo, authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for 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

7. The Commission has by Rule 4 CSR 240-2.070(1) authorized the Staff Counsel to bring complaints on the behalf of the Staff: “A complaint may also be filed by ... the commission staff through the staff counsel”

8. Section 386.570.1, RSMo, provides for a penalty between \$100.00 to \$2,000.00 per offense for any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission” Section 386.570.2, RSMo., provides that each day that a continuing violation persists is counted as a separate offense. Section 386.570.3, RSMo., provides that in the case of a corporate respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation. Section

the *2013 Stipulation* and the order approving is referred to as the *2013 Order*.

386.590, RSMo., provides that all penalties are cumulative.

Complaint:

9. The gravamen of Staff's *Complaint* is that AmMo has failed and refused to provide the required avoided costs, being those used in AmMo's most recently-adopted preferred resource plan,³ to its independent evaluation, measurement and verification ("EM&V") contractors (independent EM&V contractors are hereinafter referred to as "Evaluators")⁴ so that the Evaluators could correctly calculate the PY 2014 annual net shared benefits⁵ for use in determination of AmMo's performance incentive award for PY 2013 through PY2015.

10. On May 15, 2015, AmMo's Evaluators filed their PY2014 EM&V final reports as required by Paragraphs 5. b. ii. and 11 of the *2012 Stipulation* and paragraphs 12 and 13 of the *2013 Stipulation*.

11. Staff has reviewed the PY2014 EM&V final reports filed by the Evaluators and has confirmed with AmMo that the PY2014 net shared benefits⁶ were calculated by the Evaluators using the avoided costs in AmMo's previous adopted preferred resource plan⁷ and not the avoided costs in AmMo's most recently-adopted preferred resource

³ *In the Matter of Ameren Missouri's 2014 Utility Resource Filing pursuant to 4 CSR 240 – Chapter 22*, Case No. EO-2015-0084 (*Electric Utility Resource Filing of Union Electric Company d/b/a Ameren Missouri* (NP and HC), filed October 1, 2014).

⁴ Commission Rule 4 CSR 240-20.094(1)(R) provides: "Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs[.]"

⁵ See Footnote 6, below.

⁶ Commission Rule 4 CSR 240-20.093(1)(C) states: Annual net shared benefits means the utility's **avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports** for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis. (Emphasis added.)

⁷ *In the Matter of Union Electric Company's 2011 Utility Resource Filing Pursuant to 4 CSR 240 –*

plan,⁸ adopted as a result of AmMo's October 1, 2014, Chapter 22 triennial compliance filing in Case No. EO-2015-0084.

12. The Evaluators used the avoided costs supplied to them by AmMo to calculate the PY2014 annual net shared benefits.

13. Commission Rule 4 CSR 240-20.093(1)(F) states:

Avoided cost or avoided utility cost⁹ 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 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).

14. Staff first identified this deficiency during an April 8, 2015, meeting of the Evaluators with AmMo and stakeholders to review comments concerning the Evaluators' PY2014 EM&V draft reports.

15. On April 13, 2015, Staff requested that AmMo provide to the Evaluators and to Staff the compliant avoided costs input files beginning with 2014 avoided costs for use in the DSMore[®] model for the Evaluators' PY2014 EM&V final reports. AmMo has not complied.

16. On May 4, 2015, Staff counsel contacted AmMo counsel by email to inform the Company that failure to comply with 4 CSR 240-20.093(1)(F) could result in Staff filing a complaint against AmMo with the Commission. Despite this warning, AmMo has not complied.

Chapter 22, Case No. EO-2011-0271 (*Electric Utility Resource Filing of Union Electric Company d/b/a Ameren Missouri* (NP and HC), filed February 23, 2011).

⁸ See Footnote 3, above.

⁹ The same definition of "avoided cost" or "avoided utility cost" is contained in 4 CSR 240-3.163(1)(C), 4 CSR 240-3.164(1)A) and 4 CSR 240-20.094(1)(D).

17. AmMo's conduct described in Paragraphs 9 through 16, above, constitutes a violation of § 393.1075.3 and .4, RSMo., Commission Rule 4 CSR 240-20.093(1)(F), and the *2012 Order* and the *2013 Order*.

18. On May 11, 2015, Staff counsel discussed this matter with counsel for AmMo, who advised Staff that the Company relies on Commission Rule 4 CSR 240-20.093(2)(J) for authority to not use the most recent avoided costs as specifically required by Commission Rule 4 CSR 240-20.093(1)(F).

19. Commission Rule 4 CSR 240-20.093(2)(J) provides:

If the commission approves utility incentive component of a DSIM, such utility incentive component shall be binding on the commission for the entire term of the DSIM, and such DSIM shall be binding on the electric utility for the entire term of the DSIM, unless otherwise ordered or conditioned by the commission when approved.

20. Commission Rule 4 CSR 240-20.093(1)(EE) provides:

Utility incentive component of a DSIM means 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[.]

21. Staff states that AmMo has failed to correctly understand the interplay of Commission Rules 4 CSR 240-20.093(1)(F) and 4 CSR 240-20.093(2)(J). The latter binds the Commission, its Staff, and the utility to the use of a particular methodology, that is, *a formula*, throughout the life of the DSIM, while the former requires that *the most up to date inputs* be used in the formula when calculating the percentage share of annual net shared benefits to be awarded to AmMo as its performance incentive award. The Company's interpretation would require the Commission, by the use of stale inputs, to grant performance incentive awards based on initial projections rather than on measured achievements. Staff brings this *Complaint* because this issue concerns a

significant disagreement arising from the implementation of the MEEIA and which is worth millions of dollars to AmMo's ratepayers.

WHEREFORE, Staff prays that the Commission will provide statutory notice to Respondent, convene a hearing on Staff's *Complaint*, and, after hearing, determine that AmMo has violated a statute and Commission rules and orders as alleged herein by Staff, and will then authorize its General Counsel to seek appropriate penalties for those violations in Circuit Court; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, to all counsel of record on this 1st day of June, 2015.

/s/ Kevin A. Thompson