

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

In the Matter of Union Electric Company)
d/b/a Ameren Missouri’s 2nd Filing to)
Implement Regulatory Changes in)
Furtherance of Energy Efficiency as)
As Allowed by MEEIA)

Case No. EO-2015-0055

**REPLY TO
“STAFF RESPONSE TO ORDER DIRECTING FILING
REGARDING OFFICE OF PUBLIC COUNSEL MOTION FOR
DETERMINATION ON THE PLEADINGS”**

COMES NOW the Office of the Public Counsel (“OPC”) and replies to Staff’s Response as follows:

1. Staff made the statement that “Staff notes that the issues raised in the Motion were addressed in the prefiled testimony of various parties and could be addressed at hearing.”
2. Addressing the issues raised in OPC’s motion would undermine the Commission’s own rule. “Dispos[ing] of all or any part of a case on the pleadings” does not mean to wait for an evidentiary hearing. *Citing* 4 CSR 240-2.117(2). It means that, if the pleadings themselves request something contrary to law, this Commission has the authority to dispose of the case *without* a hearing.
3. If this Commission determines that deprivation of service does not qualify as a demand-side program under MEEIA, then disposing of the matter without a hearing is an appropriate remedy for this Commission to exercise.
4. When evaluating whether to dispose of a matter based upon the pleadings, the fact finder (Commission) is to assume the facts alleged in the pleadings are true.

“The pleadings are liberally construed and all alleged facts are accepted as true and construed in a light most favorable to the pleader.” *Koger v. Hartford Life Insurance*, 28 S.W.3d 405, 411 (Mo. App. W.D. 2000).

5. Additionally, holding an evidentiary hearing would be inefficient and would waste this Commission’s time and resources. If this Commission holds a hearing, the following issues (and potentially others) would also be heard, in addition to whether this pilot program is MEEIA eligible:

- How should the Commission define a low-income customer for purposes of the Company’s proposed pilot?
- Should the Company be required to receive Institutional Review Board (“IRB”) approval to ensure it meets the minimum goal of protecting human subjects from physical or psychological harm?
- Should the Company’s pilot program be required to be cost-effective?
- Should the company be required to calculate non-energy costs, including direct costs to participants and indirect costs to society at large, as an input for future cost-effective ratios?
- Should costs be limited to the remaining budget allocated for MEEIA Cycle II research and development?

6. Contrarily, if the threshold issue of whether pre-pay is MEEIA eligible is addressed right now, and the Commission finds that it is not, no evidence would need to be developed for the previously named issues.

7. Thus, for the purposes of this motion, no factual development is needed. The Commission should only move forward with a hearing if it finds that the Company's pleadings allege facts that themselves would satisfy the requirements of MEEIA.

8. Because the pleadings themselves, even if assumed to be true, do not satisfy the requirements set out in the MEEIA statute and this Commission's promulgated rule, no hearing is necessary and the matter can be disposed of at this time.

WHEREFORE, OPC respectfully requests that this Commission deny Ameren the pilot program requested and dismiss Ameren's Application accordingly.

Respectfully submitted,

/s/ Curtis Schube

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4th day of April, 2018.

/s/ Curtis Schube