BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI

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

AMEREN MISSOURI'S MOTION FOR SUMMARY DISPOSITION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its motion for summary disposition of the above-captioned complaint, submitted pursuant to 4 CSR 240-2.117, states as follows:

Statement of Undisputed Material Facts

1. Ameren Missouri made its first filing for approval of a demand-side program plan under MEEIA[1] (the "MEEIA 1 Plan") on January 20, 2012. *File No. EO-2012-0142, EFIS Item No. 3.*

2. The MEEIA 1 Plan, as initially proposed by Ameren Missouri, is set forth in the *2013 – 2015 Energy Efficiency Plan* report (the "Report") submitted with Ameren Missouri's Application filed on January 20, 2012. *Id., including appendices.*

3. The MEEIA 1 Plan, as originally proposed, was not adopted but instead was modified by the terms of the *Unanimous Stipulation and Agreement Resolving Ameren Missouri's*

[1] Missouri Energy Efficiency Investment Act, codified as §393.1075, RSMo. (Cum. Supp. 2013).

MEEIA Filing ("MEEIA 1 Stipulation") dated July 5, 2012. *File No. EO-2012-0142, EFIS Item No. 119.*

4. The Commission approved the MEEIA 1 Plan, as modified by the MEEIA 1 Stipulation (the "Modified Plan"), in its *Order Approving Unanimous Stipulation and Agreement Resolving Ameren Missouri's MEEIA Filing and Approving Stipulation and Agreement between Ameren Missouri and Laclede Gas Company* dated August 1, 2012 ("Stipulation Approval Order"). *File No. E0-2012-0142*, EFIS *Item No. 127.*

5. The Staff is a signatory to the Stipulation. *MEEIA 1 Stipulation.*

6. The Commission ordered the Staff (and the other signatories) to comply with the Stipulation. *Stipulation Approval Order, Ordered* ¶ *3.*

7. Approval of the Modified Plan included approving a demand-side investment mechanism ("DSIM"). *MEEIA 1 Stipulation, p. 3.*

8. The approved DSIM is described in Section 2 of the Report, as modified by ¶¶ 5, 6 and 7 of the Stipulation. *MEEIA 1 Stipulation,* ¶ *5* (*first three lines). Report, § 2 ("Demand-Side Investment Mechanism").*

9. One of the inputs that must be used to calculate net shared benefits ("NSB") is avoided costs. *Report, Figure 2.4, p. 25; Staff Complaint* ¶ *9.*

10. The main components of avoided costs are energy prices, capacity prices and transmission and distribution costs. *Report, Figure 2.4, p. 25.*

11. Avoided costs used in an IRP or for a MEEIA demand-side program plan are estimates made at a particular point in time in an effort to predict long-term future conditions that impact certain utility costs, including long-term future energy and capacity market conditions.

Affidavit of Matthew R. Michels, ¶ 4; *File No. EO-2015-0055,* Tr., *Vol. 3, p. 758, l. 12-15; p. 759, l. 25 to p. 760, l. 3.*

12. Avoided energy and capacity costs are based upon national and sometimes international market information for items such as gas, coal, electric energy and capacity, capital markets and economic drivers, most of which are outside or almost completely outside Ameren Missouri's control. Other factors affecting avoided cost estimates include environmental rules and the cost of transmission and distribution infrastructure needed to serve incremental demand. *Affidavit of Matthew R. Michels,* ¶ 5.

13. The avoided cost estimates used for Ameren Missouri's 2011 IRP, its 2014 IRP and that were used to calculate NSB reflected in the Report and MEEIA 1 Stipulation all forecasted the costs over at least an upcoming 20-year period. *Affidavit of Matthew R. Michels,* ¶ 6; *File No. EO-2015-0055, Tr., Vol. 3, p. 758, l. 16-18.*

14. The drivers of avoided cost estimates are changing all of the time. *Affidavit of Matthew R. Michels,* ¶ 7; *Tr., Vol. 3, p. 769, l. 17-24, File No. EO-2015-0055.*

15. The Report reflected NSB calculations, which used certain avoided costs. *Report, Figure 2.4, p. 25.*

16. The net shared benefits ("NSB") used in the Stipulation (see Appendix B) of $360.78 million were the same as reflected in the Report, except that the NSB used in the Stipulation were reduced by approximately $3.5 million primarily because of the agreement to increase the evaluation, measurement and verification ("EM&V") budget as compared to the EM&V budget originally proposed by Ameren Missouri in the Report, and because of the exclusion of natural gas benefits that were included in the calculations reflected in the Report. *Affidavit of William R. Davis,* ¶ 5.

17. The NSB used in the Stipulation were calculated using the same avoided costs used to calculate the NSB in the Report. *Affidavit of William R. Davis,* ¶ 6.

18. The NSB in the Stipulation and the Report were determined using a computer program called DSMore, using the avoided costs used for the NSB calculations in the Report. *Affidavit of William R. Davis,* ¶ 7.

19. On February 23, 2011, Ameren Missouri filed its 2011, triennial Integrated Resource Plan (the "2011 IRP"). *File No. EO-2011-0271, EFIS Item No. 3.*

20. The 2011 IRP contained a preferred resource plan for Ameren Missouri. *Id., p. 16 Ch. 10.*

21. The preferred resource plan for Ameren Missouri was changed in October 2011. *File No. EO-2012-0127, consolidated with File No. EO-2011-0271; EFIS Item No. 1*.

22. The change made in October 2011 to the original 2011 preferred resource plan was to substantially reduce utilization of energy efficiency programs in 2012 and, depending on the outcome of the MEEIA cycle 1 case Ameren Missouri indicated it intended to file, to eliminate energy efficiency as a resource after 2012, as compared to the original preferred resource plan which called for annual energy efficiency expenditures of between $18 million and $43 million during 2012 to 2030. *Id.; Affidavit of Matthew R. Michels,* ¶ 8.

23. The preferred resource plan in the 2011 IRP, as modified in October 2011, was the preferred resource plan in place for Ameren Missouri on January 20, 2012. *Affidavit of Matthew R. Michels.* ¶ 9.

24. Avoided costs were used to perform analyses that underlie the 2011 IRP and the preferred resource plan reflected therein. *Id.,* ¶ 10.

25. Avoided costs were used in the selection of the preferred resource plan reflected in the 2011 IRP, as modified in October 2011, with the avoided costs used for the original preferred plan in the 2011 IRP remaining the same when the original preferred plan was changed in October 2011. *Affidavit of Matthew R. Michels,* ¶ 11.

26. The avoided costs used to perform the NSB calculations in the Report and the MEEIA 1 Stipulation are different than the avoided costs used in the 2011 IRP and that underlie the selection of the 2011 IRP's preferred plan, as modified in October 2011. *Affidavit of Matthew R. Michels,* ¶ 12; *2011 IRP, Ch. 7, p. 26, Table 7.8; Report, p. 74, Table 3.14.*

27. The Staff filed testimony in the MEEIA 1 docket, but raised no objection (in testimony or in any filing in that docket) to the Company's use of avoided costs for the NSB calculations in the Report and the MEEIA 1 Stipulation that were different than the avoided costs that underlie the preferred plan in the 2011 IRP. *Affidavit of William R. Davis,* ¶ 8.

28. The Report advised all parties, including the Staff, that the avoided cost estimates for energy and capacity that underlie the NSB calculations for the MEEIA 1 filing and the Report were not the same as those used in the 2011 IRP. *Report*, p. 73, l. 17-22.

29. The Staff's testimony in the MEEIA 1 docket addressed the avoided costs used to calculate the NSB reflected in the Report, stating: "As a result of its review, Staff finds that the gross energy and demand savings levels *and avoided cost estimates* Ameren Missouri has provided for its DSM programs and spending levels *are reasonable* based on the program descriptions in Appendix B of the stated Company's report of its proposed DSM programs" (emphasis added). *Rebuttal Testimony of Hojong Kang, p. 2, l. 20 to p. 3, l. 1, File No. EO-2012-0142, EFIS Item No. 51.*

30. The methodology used to determine the avoided costs used in the preferred plan reflected in the 2011 IRP, as the preferred plan was modified in October 2011, is the same methodology used to determine the avoided costs used in the Report. *Affidavit of Matthew R. Michels*, ¶ 13.

31. The methodology used to determine the avoided costs used in developing the preferred plan in the 2011 IRP (as modified in October 2011), and the methodology used to determine the avoided costs underlying the NSB in the Report is as follows. Three primary components of avoided costs are estimated – 1) avoided energy costs, 2) avoided capacity costs, and 3) avoided transmission and distribution costs.

Avoided energy costs are determined by modeling the electric grid (the Eastern Interconnection in the United States), including all demand and available generation, using ranges of values for key driver variables, or "critical uncertain factors" that are likely to affect the market price of electric energy. Ranges of values and subjective probabilities for critical uncertain factors are defined through extensive discussion, review and analysis with subject matter experts. Probabilities for different values are also determined as part of this process. The value ranges and probabilities for the various critical uncertain factors are then combined to create scenarios represented by various combinations of values of critical uncertain factors with a commensurate probability. These scenarios are then simulated with a dispatch model of the Eastern Interconnection, yielding hourly estimates for energy prices for each year of the planning horizon, typically 20 years.

Avoided capacity costs are determined by first analyzing current or recent transactions in the visible capacity market within the Midcontinent Independent System Operator, Inc. ("MISO") market. The long-run cost of capacity is set at the value for the Cost of New Entry ("CONE") as established under Module E of MISO's tariff. This value is typically determined by estimating the levelized cost of a simple cycle gas combustion turbine generator. The cost of capacity is set at the value for CONE starting in the year that MISO expects to become short of the generating capacity needed to meet load and reliability reserve margin obligations. Interpolation is used to set the estimated price of capacity between the current visible market and the time at which MISO expects to become short of necessary generating capacity.

Avoided transmission and distribution costs are determined by estimating the amount of investment that could be avoided per kilowatt (kW) reduction in demand. This is determined by evaluating budgets for transmission and distribution projects and estimating the portion that is attributable to serving incremental demand. These values are adjusted to reflect the expectation that some investment may not be avoidable due to age, condition and reliability considerations. The resultant cost for demand-driven projects is then compared to expected total demand growth and converted into a levelized cost per kW of demand. *Id.*, ¶ 14.

32. The methodology used to determine the avoided costs used for Ameren Missouri's 2014 IRP is the same as the methodology described in ¶ 31, above. *Id.*, ¶ 16.

33. The determination of avoided costs for the IRP and related IRP filings, and the determination of the avoided costs used to calculate NSB in the Report and MEEIA 1 Stipulation, both involve forecasting what the avoided costs will be over a future of at least 20-year period (e.g., 2015 to 2034 for the 2014 IRP). *File No. EO-2015-0055, Tr., Vol. 3, p. 758, l. 16-18, Affidavit of Matthew R. Michels,* ¶ 16.

34. Avoided costs are a prediction; an estimate, made over a very long period of time. *Affidavit of Matthew R. Michels,* ¶ 17.

35. Avoided cost estimates at a given point in time may be higher or lower than at another point in time. *Id.*, ¶ 18.

36. No one knows, from year to year, what the avoided cost estimates may be in a subsequent year until the avoided cost estimates are actually developed. *Id.*, ¶ 19.

37. Estimates for market prices for energy fell significantly between 2011 and 2014. *Id.*, ¶ 20.

38. On February 28, 2014, Ameren Missouri submitted the Annual Report for the 2013 program year, as required by the MEEIA rules. *File No. EO-2014-0241, EFIS Item No. 1.*

39. The MEEIA Annual Report for 2013 reflects NSB calculations for program year one of the Modified Plan, which were calculated using the DSMore model used to calculate the NSB reflected in the Report and MEEIA 1 Stipulation. *Id., Tab 6, Tab 8.*

40. The MEEIA Annual Report for 2013 specifically identified the only 3 inputs that were changed in the DSMore model used to calculate NSB in the Report and the MEEIA 1 Stipulation when DSMore was re-run for purposes of calculating NSB for the Annual Report. *Id., Tab 8.* The avoided costs input was not changed. *Id.*

41. The Staff expressed no concerns or objections, formally or informally, regarding the NSB benefits calculations in the MEEIA Annual Report for the 2013 program year. *Docket, File. No. EO-2014-0241; Affidavit of William R. Davis,* ¶ 9.

42. On February 27, 2015, Ameren Missouri submitted the Annual Report required by the MEEIA rules. *File No. EO-2015-0210, EFIS Item No. 1.*

43. The MEEIA Annual Report for 2014 reflects NSB calculations for program year two of the Modified Plan, which were calculated using the DSMore model used to calculate the NSB reflected in the Report and Stipulation. *Id., Tab 5, Tab 7.*

44. The MEEIA Annual Report for 2014 specifically identified the only 3 inputs that were changed in the DSMore model used to calculate NSB in the Report and the MEEIA 1 Stipulation that were changed when DSMore was re-run for purposes of calculating NSB for the Annual Report. *Id., Tab 7.* The avoided costs input was not changed. *Id.*

45. The Staff expressed no concerns or objections, formally or informally, regarding the NSB benefits calculations in the MEEIA Annual Report for the 2014 program year. *Docket, File. No. EO-2015-0210; Affidavit of William R. Davis,* ¶ 10.

46. E, M & V, such as that performed by utility contractors (and audited by the Commission's Auditor), does not calculate or otherwise determine the avoided costs used to calculate NSB as reflected in E, M & V reports. Instead, the utility provides the avoided costs to the EM&V contractors. *Affidavit of William R. Davis,* ¶ 11.

47. Avoided costs estimates do not impact the number of measures installed, demand-side program administration costs, measure rebate costs or customer opt-outs., *Id.,* ¶ 12.

48. Both the Company's E, M & V contractors and the Commission's Auditor used the same avoided costs in calculating NSB in their reports, and those avoided costs were the same avoided costs that underlie the NSB reflected in the Report and Stipulation. *Id.*, ¶ 13.

49. The performance of the demand-side programs approved by the Commission as part of the Modified Plan is measured by the megawatt-hours ("MWh") of energy savings achieved by Ameren Missouri's demand-side programs. MEEIA 1 S*tipulation*, *Appendix B.*

50. The total resource cost ("TRC") test is a test of the cost-effectiveness of demand-side programs. § 393.1075.2(6), .4, RSMo. (Cum. Supp. 2013).

51. To calculate the TRC for a demand-side program, avoided costs must be used. *Id.*

52. The estimates of the impact of the DSIM on customer rates, submitted as part of the Company's MEEIA 1 filing, as required by the Commission's rules, were derived from comparing revenue requirements with, and without, the Proposed DSIM. *Affidavit of William R. Davis*, ¶ 14.

53. Part of the revenue requirement analysis submitted with the MEEIA 1 Plan, and that assumed the MEEIA 1 Plan was in operation, depended on the net benefits reflected in the Report, which in turn depended on the avoided costs used in the net benefits calculations. *Id.*, ¶ 15.

54. Total resource cost test calculations are heavily dependent on the avoided costs that are used to perform the calculations. The TRC calculations in the Report used the avoided costs used to calculate the net benefits reflected in the Report and the Stipulation. *Id.*, ¶ 16.

55. Hearing Exhibit 118 in File No. EO-2015-0055 shows that if a calculation of NSB for program year 2 (Calendar Year 2014) of the Modified Plan is performed without changing the avoided costs that were used to calculate NSB in the Report and the Stipulation 26.34% of the NSB for program year 2 would be $47,055,838. *Exhibit 118; Affidavit of William R. Davis*, ¶ 17*; File No. EO-2015-0055, Tr., Vol. 3, p. 769, l. 17-20.*

Motion for Summary Disposition

Under 4 CSR 240-2.117(1)(E), summary disposition should be granted where "the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest." Summary disposition is appropriate in this case because (a) the complaint is a collateral attack on the Stipulation Approval Order, in violation of Section 386.550, RSMo. (2000)[2], (b) the Staff is not entitled to relief because there has been no violation of any provision of law, or any rule, order or

[2] "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive."

decision of the Commission, (c) the filing of the complaint constitutes a failure by the Staff to abide by the directive in the Stipulation Approval Order requiring its parties to abide by its terms, (c) the filing of the complaint is a breach by the Staff of the MEEIA 1 Stipulation. Because there are no genuine issues of material fact and the complaint is barred as a matter of law, Ameren Missouri is entitled to summary disposition in its favor. As required by 4 CSR 240-2.117(1)(B), Ameren Missouri files contemporaneously with this Motion a legal memorandum explaining why summary disposition should be granted and incorporates said memorandum herein.

WHEREFORE, Ameren Missouri moves for an order granting summary disposition of this case and dismissing the complaint with prejudice.

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/s/ James B. Lowery

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of August, 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

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

CITY OF ST. LOUIS)
)ss.
STATE OF MISSOURI)

AFFIDAVIT OF WILLIAM R. DAVIS

William R. Davis, being the age of 18 or older and upon his oath, states as follows:

1. My name is William R. Davis.

2. I am the Economic Analysis and Pricing Manager for Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company").

3. I was the principal developer of the *2013 – 2015 Energy Efficiency Plan* report (the "Report") submitted with Ameren Missouri's Application filed on January 20, 2012 in Commission File No. EO-2012-0142. I was also the principal designer of the demand-side investment mechanism ("DSIM") that is outlined and detailed in the Report.

4. I was also deeply involved in developing the terms of the *Unanimous Stipulation and Agreement Resolving Ameren Missouri's MEEIA Filing* ("MEEIA 1 Stipulation") dated July 5, 2012, filed in File No. EO-2012-0142, including those portions of the MEEIA 1 Stipulation relating to the DSIM, and also specifically including the performance incentive (utility incentive component) of the DSIM.

5. The net shared benefits ("NSB") used in the Stipulation (see Appendix B) of $360.78 million were the same as reflected in the Report, except that the NSB used in the Stipulation were reduced by approximately $3.5 million primarily because of the agreement to increase the evaluation, measurement and verification ("EM&V") budget as compared to the EM&V budget originally proposed by Ameren Missouri in the Report, and because of the exclusion of natural gas benefits that were included in the calculations reflected in the Report.

6. The NSB used in the Stipulation were calculated using the same avoided costs used to calculate NSB for the Report.

7. The NSB in the Stipulation and the Report were determined using a computer program called DSMore, using the avoided costs used for the NSB calculations in the Report.

8. The Staff filed testimony in the MEEIA 1 docket, but raised no objection (in testimony or in any filing in that docket) to the Company's use of avoided costs for the NSB calculations in the Report and the MEEIA 1 Stipulation that were different than the avoided costs that underlie the preferred plan in the 2011 IRP.

9. The Staff expressed no concerns or objections, formally or informally, regarding the NSB benefits calculations in the MEEIA Annual Report filed in File No. EO-2014-0241 for the 2013 program year.

10. The Staff expressed no concerns or objections, formally or informally, regarding the NSB benefits calculations in the MEEIA Annual Report filed in File No. EO-2015-0210 for the 2014 program year.

11. Evaluation, Measurement and Verification, such as that performed by utility contractors (and audited by the Commission's Auditor), does not calculate or otherwise determine avoided costs. Instead, the utility provides the avoided costs to the EM&V contractors.

12. Avoided costs estimates do not impact the number of measures installed, demand-side program administration costs, measure rebate costs or customer opt-outs.

13. Both the Company's E, M & V contractors and the Commission's Auditor used the same avoided costs in calculating NSB in their reports, and those avoided costs were the same avoided costs that underlie the NSB reflected in the Report and Stipulation.

14. The estimates of the impact of the DSIM on customer rates, submitted as part of the Company's MEEIA 1 filing, as required by the Commission's rules, were derived from comparing revenue requirements with, and without, the proposed DSIM.

15. Part of the revenue requirement analysis submitted with the MEEIA 1 Plan, and that assumed the MEEIA 1 Plan was in operation, depended on the net benefits reflected in the Report, which in turn depended on the avoided costs used in the net benefits calculations.

16. Total resource cost test calculations are heavily dependent on the avoided costs that are used to perform the calculations. The TRC calculations in the Report used the avoided costs used to calculate the net benefits reflected in the Report and the Stipulation.

17. Hearing Exhibit 118 in File No. EO-2015-0055 shows that if a calculation of NSB for program year 2 (Calendar Year 2014) of the Modified Plan is performed without changing the avoided costs that were used to calculate NSB in the Report and the Stipulation 26.34% of the NSB for program year 2 would be $47,055,838.

FURTHER AFFIANT SAYETH NOT.

William R Davis

William R. Davis

Subscribed and sworn to before me, a Notary Public in the state of Missouri, on this 28th day of August, 2015.

Beckie J. Eaves

Notary Public

BECKIE J. EAVES
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: February 21, 2018
Commission Number: 14938572

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

CITY OF ST. LOUIS)
)ss.
STATE OF MISSOURI)

AFFIDAVIT OF MATTHEW R. MICHELS

Matthew R. Michels, being the age of 18 or older and upon his oath, states as follows:

1. My name is Matthew R. Michels.

2. I am a Sr. Manager in Corporate Analysis. I have been in charge of the preparation of each of Ameren Missouri's last two IRPs (2011 and 2014), and the development of its preferred plans during that time.

3. From 2008 through the present, I have been responsible for the development of the avoided costs used in all Ameren Missouri filings with the Commission, including those relating to the Commission's integrated resource plan ("IRP") rules, and under MEEIA[1] and the Commission's MEEIA rules.

4. Avoided costs used in an IRP or for a MEEIA demand-side program plan are estimates made at a particular point in time in an effort to predict long-term future conditions that affect certain utility costs, including long-term future energy and capacity market conditions.

[1] Missouri Energy Efficiency Investment Act, §393.1075, RSMo (Cum. Supp. 2013).

5. Avoided energy and capacity costs are based upon national and sometimes international market information for items such as gas, coal, electric energy and capacity, capital markets, and economic drivers, most of which are outside or almost completely outside Ameren Missouri's control. Other factors affecting avoided cost estimates include environmental rules and the cost of transmission and distribution infrastructure needed to serve incremental demand.

6. The avoided cost estimates used for Ameren Missouri's 2011 IRP, its 2014 IRP and that were used to calculate net shared benefits ("NSB") reflected in the Report and MEEIA 1 Stipulation all forecasted the costs over at least an upcoming 20-year period.

7. The drivers of avoided cost estimates are changing all of the time.

8. The change made in October 2011 to the original 2011 preferred resource plan was to substantially reduce utilization of energy efficiency programs in 2012 and, depending on the outcome of the MEEIA cycle 1 case Ameren Missouri indicated it intended to file, to eliminate energy efficiency as a resource after 2012, as compared to the original preferred resource plan which called for annual energy efficiency expenditures of between $18 million and $43 million during 2012 to 2030.

9. The preferred resource plan in the 2011 IRP, as modified in October 2011, was the preferred resource plan in place for Ameren Missouri on January 20, 2012.

10. Avoided costs were used to perform analyses that underlie the 2011 IRP and the preferred resource plan reflected therein.

11. Avoided costs were used in the selection of the preferred resource plan reflected in the 2011 IRP, as modified in October 2011, with the avoided costs used for the original preferred plan in the 2011 IRP remaining the same when the original preferred plan was changed in October 2011.

12. The avoided costs used to perform the NSB calculations in the *2013 – 2015 Energy Efficiency Plan* report (the "Report") submitted with Ameren Missouri's Application filed on January 20, 2012. and the *Unanimous Stipulation and Agreement Resolving Ameren Missouri's MEEIA Filing* ("MEEIA 1 Stipulation") dated July 5, 2012. are different than the avoided costs used in the 2011 IRP and that underlie the selection of the 2011 IRP's preferred plan, as modified in October 2011.

13. The methodology used to determine the avoided costs used in the preferred plan reflected in the 2011 IRP, as the preferred plan was modified in October 2011, is the same methodology used to determine the avoided costs used in the Report.

14. The methodology used to determine the avoided costs used in developing the preferred plan in the 2011 IRP (as modified in October 2011), and the methodology used to determine the avoided cost underlying the NSB in the Report is as follows. Three primary components of avoided costs are estimated – 1) avoided energy costs, 2) avoided capacity costs, and 3) avoided transmission and distribution costs. Avoided energy costs are determined by modeling the electric grid (the Eastern Interconnection in the United States), including all demand and available generation, using ranges of values for key driver variables, or "critical uncertain factors" that are likely to affect the market price of electric energy. Ranges of values and subjective probabilities for critical uncertain factors are defined through extensive discussion, review and analysis with subject matter experts. Probabilities for different values are also determined as part of this process. The value ranges and probabilities for the various critical uncertain factors are then combined to create scenarios represented by various combinations of values of critical uncertain factors with a commensurate probability. These scenarios are then simulated with a dispatch model of the Eastern Interconnection, yielding hourly estimates for energy prices for each year of the planning horizon, typically 20 years.

Avoided capacity costs are determined by first analyzing current or recent transactions in the visible capacity market within the Midcontinent Independent System Operator, Inc. ("MISO") market. The long-run cost of capacity is set at the value for the Cost of New Entry ("CONE") as established under Module E of MISO's tariff. This value is typically determined by estimating the levelized cost of a simple cycle gas combustion turbine generator. The cost of capacity is set at the value for CONE starting in the year that MISO expects to become short of the generating capacity needed to meet load and reliability reserve margin obligations. Interpolation is used to set the estimated price of capacity between the current visible market and the time at which MISO expects to become short of necessary generating capacity.

Avoided transmission and distribution costs are determined by estimating the amount of investment that could be avoided per kilowatt (kW) reduction in demand. This is determined by evaluating budgets for transmission and distribution projects and estimating the portion that is attributable to serving incremental demand. These values are adjusted to reflect the expectation that some investment may not be avoidable due to age, condition and reliability considerations. The resultant cost for demand-driven projects is then compared to expected total demand growth and converted into a levelized cost per kW of demand.

15. The methodology used to determine the avoided costs used for Ameren Missouri's 2014 IRP is the same as the methodology described in ¶ 14, above.

16. The determination of avoided costs for the IRP and related IRP filings, and the determination of the avoided costs used to calculate NSB in the Report and MEEIA 1 Stipulation, both involve forecasting what the avoided costs will be over a future of at least 20-year period (e.g., 2015 to 2034 for the 2014 IRP).

17. Avoided costs are a prediction; an estimate, made over a very long period of time.

18. Avoided cost estimates in a given year may be higher or lower than at another point in time.

19. No one knows, from year to year, what the avoided cost estimates may be in a subsequent year until the avoided cost estimates are actually developed.

20. Estimates for market prices for energy fell significantly between 2011 and 2014.

FURTHER AFFIANT SAYETH NOT.

Matthew R. Michels

Subscribed and sworn to before me, a Notary Public in the state of Missouri, on this 28th day of August, 2015.

Notary Public

BECKIE J. EAVES
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: February 21, 2018
Commission Number: 14938572

BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI

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

AMEREN MISSOURI'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") and, pursuant to 4 CSR 240-2.117(B), hereby submits the following memorandum of law in support of its motion for summary disposition filed concurrently herewith.

Applicable Legal Principles

The Commission's summary disposition rule is intended to promote efficient resolution of matters where there is no genuine dispute as to any material fact. The standard for granting a motion for summary disposition is set forth in 4 CSR 240-2.117(1)(E), which states:

> The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.

The Commission has recognized that "[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest." *Determination on the Pleadings*, Case No. EU-2005-0041 (*In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases*, on October 7, 2004). The standard for granting a motion for summary determination is essentially the same as the standard for summary judgment set forth in the Missouri Rules of Civil Procedure. *Cf.* Mo. R. Civ. P. 74.04(c)(6).

Commission orders are immune from collateral attack. Section 386.550 provides that "[i]n all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive."

A complainant is not entitled to relief if there has been no violation of a provision of law, or of a rule, order or decision of the Commission. §393.390.1, RSMo (2000).

As outlined below, not only has there been no violation of any provision of law, or of any rule, order, or decision of the Commission, it is Staff's position under the complaint – and indeed the Staff's action in bringing the complaint – that violates the Commission's MEEIA[1] rules and its order approving the stipulation that approved the demand-side investment mechanism ("DSIM") at issue here. Consequently, Ameren Missouri is entitled to summary disposition as a matter of law, and the complaint must be dismissed with prejudice.

Argument

The material facts pertinent to this complaint are not in dispute, and are set forth in the Motion for Summary Disposition filed concurrently herewith.

The central question in this case is what avoided costs should be used to perform the net shared benefits ("NSB") calculations for the utility incentive component[2] of Ameren Missouri's DSIM for the second program year (2014) of Ameren Missouri's MEEIA cycle 1 Plan. The complainant, the Staff, contends that avoided costs from the preferred plan reflected in the Company's 2014 integrated resource plan ("IRP") should be used in these calculations and, in turn, should be used to determine the performance incentive arising from operation of the programs in

[1] Missouri Energy Efficiency Investment Act, §393.1075, RSMo (Cum. Supp. 2013).
[2] The utility incentive component of Ameren Missouri's DSIM is sometimes referred to herein, as it was in the Report, as the "performance incentive."

2014. The Company contends that the avoided costs used in its MEEIA 1 Plan must be used.

The NSB calculations are reflected in evaluation, measurement and verification ("EM&V") reports submitted in File No. EO-2012-0142 by the Company's EM&V contractors and also by the Commission's EM&V Auditor. Both the contractors' and EM&V Auditor's reports used the same avoided costs, which are the avoided costs used in the preparation of the Company's MEEIA 1 Plan. Those avoided costs were used to calculate the NSB that underlie the cost-effectiveness test results (i.e., the Total resource cost test, or "TRC") filed in support of the MEEIA 1 Plan, they are the avoided costs used to calculate the rate impact analyses required by the Commission's MEEIA rules and submitted as part of the filing of the MEEIA 1 Plan, and they are the avoided costs reflected in NSB calculations in the MEEIA 1 Plan Report and in the MEEIA 1 Stipulation. That Report, together with the Stipulation, constitute the Modified MEEIA 1 Plan approved by the Commission.

The sole support for the Staff's contention that a different set of avoided costs (those from the 2014 IRP) should have been used is one sentence in the definition of "avoided costs," as that phrase is defined in the Commission's MEEIA rules, which is set forth in italics 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 included avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission and distribution facilities included avoided probable environmental costs. *The utility shall use the same methodology used in its most-recently-adopted preferred resource plan to calculate its avoided costs* (emphasis added).[3]

Staff's sole argument is that the italicized sentence means that if during the operation of a MEEIA plan the utility adopts a preferred resource plan that is different from the preferred resource plan that was in force when the MEEIA plan was filed, the utility is thereafter[4] required to use the

[3] 4 CSR 240-3.163(1)(C), 4 CSR 240-3.164(1)(A), 4 CSR 240-20.093(1)(F) and 4 CSR 240-20.094(1)(D).

[4] At least until a different preferred plan is adopted using different avoided cost estimates.

avoided costs that underlie that new preferred resource plan in calculating NSB for purposes of determining the performance incentive component of the MEEIA plan's DSIM. In the Staff's words, those later-estimated avoided costs, used for the new preferred plan, are "inputs" that must be used "in the formula when calculating the percentage share of annual net shared benefits to be awarded . . ." as a performance award.[5] Staff's argument reflects a position directly at odds with the Modified MEEIA 1 Plan, with the terms of the Commission's regulations and with logic and common sense.

A. The Modified MEEIA 1 Plan Prohibits Use of Avoided Costs, Other than those Used for the Preparation of the Plan Itself, because the Commission-Approved DSIM Expressly Provides that the Avoided Costs Will Not be Updated.

The Commission-approved MEEIA 1 Plan and, more specifically, the DSIM approved by the Commission as part of its Plan approval, is reflected in the terms outlined in the Report, except to the extent those terms were modified by the terms of the Stipulation: "For purposes of this Stipulation, Ameren Missouri's three-year demand-side program plan (the "Plan") consists of the 11-demand-side programs ("MEEIA Programs") described in Ameren Missouri's January 20, 2012 MEEIA Report, the demand-side investment mechanism ("DSIM") described in the MEEIA Report, modified to reflect the terms and conditions herein, and the Technical Resource Manual …."[6]

A DSIM has five possible components, as provided for in 4 CSR 240-20.093(1)(M). Two of the five possible components are not included in Ameren Missouri's DSIM, but the other three are, those being items 1, 4 and 5. Item 1 is the DSIM component for recovery of program costs,

[5] Complaint, ¶ 21.
[6] Stipulation, ¶4.

Item 4 is the DSIM component for recovery of lost revenues[7] and Item 5, which is the only component at issue in this complaint, is the DSIM component for the utility incentive (i.e., the performance incentive). Under the rules, the "utility incentive" component of a DSIM is a methodology approved by the Commission to allow the utility to receive a portion of annual NSB.[8]

The Report sets out the terms, conditions and operation of the DSIM (including the utility incentive component) that the Commission approved, except, as noted, to the extent the DSIM was modified by the Stipulation. More specifically, Chapter 2 of the Report (entitled "Demand-Side Investment Mechanism"), contains those terms. The first five sub-sections of Chapter 2 (2.1 to 2.5) outline various terms of the DSIM, and subsection 2.6 provides for its implementation. Section 2.6 provides in pertinent part as follows:

> 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).

Table 2.12 is reproduced in its entirety below:

Table 2.12 Description of Update Process

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

[7] Pursuant to waivers approved by the Commission, instead of lost revenues the throughput disincentive for Ameren Missouri's MEEIA 1 Plan is addressed via a "TD-NSB" component of the DSIM.
[8] 4 CSR 240-20.093(1)(EE).

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%

Sub-section 2.6 could not be clearer. There were some items (those with a green checkmark) that are to be updated "for purposes of assessing performance and benefits." There were other items (those with a red "X") that are not to be updated "for purposes of assessing performance and benefits." Avoided costs are an item that is <u>not</u> to be updated – period. As Sub-subsection 2.6 also provides, the focus (of determining the performance incentive and net benefits) is on "the cost of the programs and the number of measures implemented." Avoided costs estimates have no impact on either of those parameters.[9]

The only way, therefore, that avoided costs could be updated and also comply with the Stipulation and the Commission's Order approving it would be if the Stipulation modified the performance incentive in the DSIM. It did not. The DSIM is addressed in ¶ 5 of the Stipulation: "The Signatories agree that the Commission should approve the DSIM described in the MEEIA Report, after being modified as set forth in this paragraph, paragraph 6 and paragraph 7, including all of their subparts."[10] Sub-paragraph 5.b.ii addresses modifications to the determination of NSB for the performance incentive described in the Report. Nothing in that sub-paragraph modifies the provisions of Sub-section 2.6 of the Report which, as noted, expressly prohibits the updating of

[9] *Affidavit of William R. Davis* (Davis Affidavit), ¶ 12.
[10] Stipulation, ¶ 5.

avoided costs. The utility incentive component of the DSIM is, therefore, as described in Section 2 of the Report, plus the modifications in sub-paragraph 5.b.ii of the Stipulation — nothing more and nothing less.[11]

The foregoing demonstrates – unambiguously and in black and white (and even in red) – that to accept Staff's interpretation of the one sentence in the MEEIA rules' definition of "avoided costs" (which, as we discuss below, is an incorrect interpretation in any event) would be to violate the terms of the Stipulation and the Commission's Order approving it and, even more specifically, it would be directly at odds with the utility incentive component of the DSIM the Commission approved.[12]

B. The utility incentive component of the DSIM, which by its approved terms does not allow an update to the avoided costs, is binding on the Commission for the entire term of the DSIM.

4 CSR 240-20.093(2)(J) provides as follows:

> If the commission approves [a] 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.

The plain terms of this regulation means that if the utility incentive component prohibits the update of avoided costs, that prohibition remains until the utility incentive component has been finally determined. Staff attempts to avoid this result by arguing that that the "interplay" of this regulation and the sentence the Staff relies on in the definition of "avoided costs" means that inputs (new avoided costs, says the Staff) can be used in the formula for the utility incentive component,

[11] ¶¶ 6 and 7 of the Stipulation address true-up of the various components of the DSIM, and how a rider might be implemented for the DSIM depending on the outcome of a then-pending appeal, but do not modify the DSIM in any way pertinent to the issue in this complaint.

[12] Moreover, it follows that the Staff is acting in violation of the Stipulation by bringing this complaint, because the complaint seeks relief that is at odds with the Stipulation, and is similarly acting in violation of the Commission's Order approving the Stipulation, since the Commission's order requires the Staff to "comply with the terms of the stipulations and agreements." Stipulation, Ordered ¶3.

which, the Staff says, does not render the utility incentive component "non-binding."[13] The express terms of both regulations completely refute the Staff's interpretation.

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).[14] A "methodology" is "a particular procedure or set of procedures."[15] Sub-section 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.

Turning to the so-called "interplay" between the provision of the rules that bind the Commission (and the utility) to the "utility incentive component" and the sentence the Staff relies upon, one can easily see that, whether or not intentionally, the Staff's complaint in fact amounts to a *change* to the definition of "avoided costs." The pertinent sentence from that definition provides that the "utility shall use the same *methodology* used in its most recently-adopted preferred resource plan to calculate its avoided costs" (emphasis added). When describing the regulation, however, and in its argument about why it overcomes the fact that the utility incentive component is binding, the Staff effectively replaces the word "methodology" with the word "inputs," so that under the Staff's argument the rule would have to read the "the utility shall use the same *inputs* used in its most recently-adopted preferred resource plan to calculate its avoided costs."[16] However, the rule says no such thing.

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[13] Complaint, ¶21.
[14] 4 CSR 240-20.093(1)(EE).
[15] *Webster'sNew World College Dictionary* (4th ed.).
[16] Complaint, ¶ 21.

"Inputs" and a "methodology" are patently not the same. The most pertinent portion of the definition of "input" from *Merriam Webster's* dictionary is that an input is "information fed into a data processing system or computer." Avoided costs are, without question, data fed into a computer when net benefits are calculated; more specifically, data fed into the DSMore program used by the Company.

However, the *methodology* used by the computer or the analyst or mathematician or by whomever may be performing calculations using varying inputs is completely unaffected by the *inputs*. If one uses the equation 2X + Y = Z, the inputs are X and Y, but the methodology *is* the equation. When one varies X, or Y, or both, the equation; the method; does not change. And that is precisely what sub-section 2.6 of the Report tells us. Avoided costs in the equation used to determine net benefits are fixed for the entire term of the utility incentive component of the DSIM.

What the sentence relied upon by the Staff means is that when avoided costs must be calculated in relation to the submission of a MEEIA plan, the same method, the same procedure or set of procedures, must be used as was used for calculating avoided costs used in the IRP which led to the preferred plan. In other words, the utility cannot use one process for calculating avoided costs for the IRP and then use a different process for calculating them for MEEIA. Here, the Company used the same process in both its most recent IRP underlying its most recent preferred plan (i.e., as of the time the MEEIA 1 Plan was prepared – its 2011 IRP and the preferred plan reflected therein) as it used when it later determined the avoided costs for its MEEIA 1 Plan.[17] The Company did *not*, however, use the same avoided cost *inputs* for its 2011 IRP as the avoided costs inputs it used for its MEEIA 1 Plan[18] *because that is not what the MEEIA rule provides for*. The same methodology was used, to be sure, but the same inputs (i.e., the same values for drivers of

[17] Affidavit of Matthew R. Michels, (Michels Affidavit), ¶ 13.
[18] Michels Affidavit, ¶ 12.

avoided costs – the dollars and cents of energy prices, capacity prices, and avoided T& D costs) were not used.

The Staff knew this, or at a minimum, had all of the information it needed to know this in its possession. Table 7.8 from the 2011 IRP shows the avoided costs underlying the IRP while Table 3.14 from the Report shows the avoided costs used for the MEEIA 1 Plan. [19]

While the numbers are not drastically different,[20] the avoided costs are not the same, as one can readily see. Tables 7.8 from the IRP and 3.14 from the Report were developed using the same methodology[21], but the inputs were different and thus the outputs (the avoided costs) were different as well. Moreover, the Company specifically advised the Staff that the avoided cost estimates for energy and capacity used for the MEEIA 1 filing were different than those used in the 2011 IRP.[22] Despite filing testimony in rebuttal to the MEEIA 1 Plan, as-filed, the Staff raised no concerns and lodged no objections (in rebuttal testimony or otherwise) whatsoever because the inputs (the avoided costs) used for the 2011 IRP were different than the avoided costs used for the MEEIA 1 Plan.[23] In fact, the Staff's testimony in the MEEIA 1 docket was that the avoided costs used to determine the net benefits reflected in the Report were reasonable.[24]

The foregoing facts demonstrate that the Staff did not interpret the definition of "avoided costs" in the MEEIA rules to require the use of the same "inputs" (avoided costs) (as the Staff refers to them) from the most recent IRP be used for the MEEIA plan, because the same inputs in fact were not used, and the Staff knew it. The Company didn't conceal the difference in avoided costs. Those differences, like the methodology for the utility incentive component of the DSIM,

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[19] *2011 IRP, Ch. 7, p. 26, Table 7.8; Report, p. 74, Table 3.14.*
[20] The different avoided cost calculations were done within a year of each other.
[21] Michels Affidavit, ¶13.
[22] Report, p. 73, 1. 17-22.
[23] Davis Affidavit, ¶ 8.
[24] Rebuttal Testimony of Hojong Kong, p. 2, 1. 20 to p. 3, 1. 1, File No. E0-2012-1042, EFIS Item No. 51.

are set out in black and white in various filings and submissions made by the Company and undoubtedly provided to the Staff. In fact, if the Staff's interpretation were right, then the Commission approved a MEEIA plan that is contrary to the Commission's MEEIA rules because the plan used the wrong avoided costs.[25]

As earlier discussed, the Commission approved the utility incentive component of the DSIM when it approved the DSIM itself. The Commission, and the utility, are bound by it, and what they are bound to is the methodology, because the utility incentive component is a methodology; it is not a dollar figure. To turn avoided costs, which is a fixed component of the methodology, into a variable component, is to change the methodology itself and since the utility incentive component *is* a methodology, turning avoided costs into a variable component is a change to the utility incentive component itself. The rules (not to mention the MEEIA 1 Plan) prohibit such a result.

C. The Staff's Position is at Odds With Other Provisions of the MEEIA Rules and the MEEIA 1 Plan.

When a MEEIA plan is submitted for approval, the MEEIA rules require a significant amount of information for the Commission to process and consider in making its decision regarding whether to approve the plan, as the MEEIA rules themselves demonstrate. For example, 4 CSR 240.3.163(2)(D) requires the utility to provide estimates of the impact of the DSIM on customer rates over the next five years. Those estimates are derived from comparing revenue requirements with, and without the proposed DSIM.[26] Part of the "with the proposed DSIM" revenue requirement analyses of course depend on the net benefits to be realized from the plan and, consequently, on the avoided costs used in the plan filing.[27]

[25] The Commission, of course, did no such thing, for the reasons we've described.
[26] Davis Affidavit, ¶ 14.
[27] Davis Affidavit, ¶ 15.

Another example of information that must be submitted, that is also impacted significantly by the avoided costs that are used, are the cost-effectiveness calculations required by the rules. 4 CSR 240-3.164(2)(B) requires a demonstration of the cost-effectiveness of each demand-side program included in the plan, including a calculation of the TRC (total resource cost) for each. The TRC calculations are heavily dependent on the avoided costs that are used.[28] The criteria the Commission uses when making its demand-side program approval decision is heavily based on the TRC values submitted with the filing (which, again, rely on the avoided costs used in the filing). 4 CSR 240.094(3)(A) specifically requires the Commission to approve programs with a TRC of greater than one, if three criteria listed in that same rule are met. The TRC calculations in the Report used the avoided costs used to calculate the net benefits reflected in the Report and the Stipulation.[29]

MEEIA itself makes the TRC the preferred cost-effectiveness test, and a goal of MEEIA is to encourage pursuit of all cost-effective demand-side savings.[30] Again, whether a MEEIA plan is cost-effective depends heavily on the avoided costs that were used.

The Commission is confronted with a decision as to whether to approve a MEEIA plan at a given point in time. It has to make that decision using the information that is available to it *then*, including the customer rate impact and cost-effectiveness information, which depend heavily on the avoided costs used in the MEEIA plan that has been filed. The Commission doesn't "de-approve" a plan two or three years later if avoided cost estimates for a later IRP go down (which if used would lower NSB), any more than does the Commission "re-affirm" a plan later if later

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[28] Davis Affidavit, ¶ 16; §393.1075.2(6) ("Total resource cost test", a test that compares the sum of *avoided utility costs* and avoided probable environmental costs to the sum of all incremental costs of end-use measures that are implemented due to the [demand-side] program . . ." emphasis added).).
[29] Davis Affidavit, ¶ 16.
[30] §393.1075.4, RSMo (Cum. Supp. 2013).

avoided cost estimates go up (which if used would raise NSB).

Like decisions to invest in a supply-side resource – and a Commission decision to include the investment in rate base – once the resource is deployed the Commission doesn't, because of facts that changed later, reverse an earlier prudence determination and somehow force the resource out of rate base. The Commission had to decide based on the information it (and the utility) had at the time. For example, a decision to put a scrubber on a plant might be made based upon assumed limestone costs. Limestone costs might later double. This means that the operating costs of the scrubber may go up significantly, and had that been known when it was built and placed in-service, it is possible that the decision to build it might not have been made. But that doesn't mean the utility made a poor decision, nor does it mean the utility didn't operate the scrubber properly.

Moreover, because all avoided cost calculations are estimates,[31] long-term (at least 20 years) estimates,[32] it is impossible to conclude that "the" costs avoided by pursuing energy efficiency were precisely $X, meaning it is impossible to be sure of what the net benefits truly are. The avoided costs for the 2011 IRP, the avoided costs used for the MEEIA 1 plan and the avoided costs used for the 2014 IRP all reflect forecasted information about a myriad of factors, such as gas costs, demand growth, generation capacity, environmental rules, etc. – over a long, at least 20-year period – and the drivers of such forecasts change all of the time.[33] Avoided cost estimates in 2011 may be higher than in 2014, but in 2017, or 2018, or 2023, avoided cost estimates may be significantly higher than 2014 again.[34] No one knows.[35]

Regulations, like statutes, are to be interpreted first according to their plain meaning and, if they are ambiguous, in a manner that leads to logical results. *See, e.g., Teague v. Mo. Gaming*

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[31] Michels Affidavit, ¶ 17.
[32] *Id.*
[33] Michels Affidavit, ¶ 4, 5 & 7.
[34] *Id.*, ¶ 18.
[35] *Id.*, ¶ 19.

Comm'n, 127 S.W.3d 679, 585-86 (Mo. App. W.D. 2003) ("Regulations are interpreted according to the same rules as statutes . . . In interpreting regulations, the words must be "given their plain and ordinary meaning."); *Budding v. SSM Healthcare Sys.*, 19 S.W.3d 678, 681 (Mo. App. S.D. 1999) ("Regulations should be interpreted reasonably, and absurd interpretations should not be adopted."); *Board v. Eurostyle, Inc.*, 998 S.W.2d 810, 814 (Mo. App. S.D. 1999) ("It is presumed that the legislature, in enacting a statute, intended a logical result; that it did not intend an unreasonable one").

The definition of "avoided costs" at issue here has a plain meaning. Under that plain meaning, it is the methodology, not the avoided cost estimates produced by the methodology that must be consistent between the most recent preferred plan and the MEEIA plan. But even if there were ambiguity, the regulation can't logically be interpreted as the Staff contends it should be. This is because the Staff's position on this complaint, in particular as applied to the biggest component of avoided costs (energy costs), would take the utility incentive component of the DSIM (which by its terms turns on Ameren Missouri's performance in reaching certain levels of megawatt-hour savings) and turn it into an "energy cost lottery." If the market price of power – over which Ameren Missouri has little or no control[36] – falls, as it did between 2011 and 2014[37] – then under the Staff's position the Company would receive far less under the utility incentive component even if its performance in achieving MWh savings was strong. Even if the Company did a good job of controlling program costs and did a good job of deploying measures that EM&V indicates saved a lot of energy – even more than the energy savings targets – simply because of the operation of national power markets, the Company would earn far less; it would lose the lottery. And the contrary is just as true. Had the avoided cost estimates happened to spike when the 2014 IRP was being prepared, the Company could have won the lottery (if the Staff was right) because

[36] Michels Affidavit, ¶ 5.
[37] Michels Affidavit, ¶ 20.

those much higher avoided costs would have increased the net benefits and thus the Company's performance incentive reward would increase as well; the lottery ticket would have paid off.

At bottom, Staff's position is not only refuted by the terms of the MEEIA 1 Plan and the approved DSIM and by the rules, but it also makes no sense. It makes absolutely no sense that relevant considerations accounted for by the Commission in deciding whether the approve the plan in the first place, which are heavily dependent on the avoided costs used when the plan was filed, would be changed in mid-plan operation by substituting new, long-term estimates for which the drivers change all of the time for the estimates the Commission relied upon when it approved the plan. And the illogic inherent in such a result is made even clearer when one considers that the biggest drivers of changes in those estimates are items over which the utility has little or no control – wholesale markets for energy and capacity. The utility incentive component isn't supposed to be a lottery. Under Staff's position, that's exactly what it becomes.

WHEREFORE, Ameren Missouri moves for summary disposition of this case in its favor, and requests that the Commission make and enter its order dismissing the complaint with prejudice.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of August, 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