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 Allowed by MEEIA.	))))	**Case No. EO-2015-0055**

OFFICE OF THE PUBLIC COUNSEL'S REPLY TO
AMEREN MISSOURI'S RESPONSE TO COMMISSION ORDER

COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and for its Reply to Ameren Missouri's Response to Commission Order, states as follows:

Introduction

It is wrong for Ameren to over-collect millions of dollars from ratepayers. Yet, this is exactly what the company's proposal ensures will happen – just like in Cycle 1. However, this outcome is not inevitable. The Commission is empowered to tell Ameren under what conditions Ameren can choose to earn millions of dollars while pursuing energy efficiency programs. Mo. Rev. Stat. § 393.1075.4 (Cum. Supp. 2013).

After the hearing, the Commission exercised this power and raised two primary concerns that the parties should address (Doc. Nos. 260 and 268). Specifically, the Commission indicated that it wanted to see 1) retrospective Evaluation, Measurement, and Verification ("EM&V") in calculating the throughput disincentive, and 2) a component of supply-side investment reduction in calculating the performance incentive (Doc. No. 260).

These concerns address two major flaws present in Ameren's MEEIA Cycle 1. First, Ameren has over-collected in Cycle 1, in part, because the company is able to collect money from ratepayers based on "deemed" values never subject to true-up. We know this because the EM&V results show that ratepayers have paid Ameren for more energy savings than the

company's programs actually caused. Second, Ameren's Cycle 1 performance incentive does not actually require the company to show that it has foregone any earnings opportunity related to supply-side investment before it receives a financial reward. This approach perversely incents the company to pursue programs that do not reduce the company's need to make supply-side investments and can allow the company to receive double recovery.

The parties met to discuss the issues but could not reach an agreement. Ameren, intent on preserving its ability to over-collect, remains unwilling to incorporate retrospective EM&V of its energy savings or to embrace a performance incentive that is based on meaningful supply-side investment reduction.

Rather than continue discussions with the parties, Ameren filed its *Response to Commission Order* (Doc. No. 273). In an attempt to negotiate directly with the Commission, Ameren offered "additional modifications" to its flawed and unlawful *Non-unanimous Stipulation and Agreement* filed June 30, 2015 ("Ameren Stipulation") (Doc. Nos. 100 and 273). These modifications do not address the Commission's objections and continue to ensure that Ameren over-collects millions of dollars.

Throughput Disincentive Cost-Recovery Component

The Missouri Energy Efficiency Investment Act ("MEEIA") establishes Missouri's policy "to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." Mo. Rev. Stat. § 393.1075.3. In support of this policy, the statute provides that the Commission may approve three distinct MEEIA revenue components; the second component is at issue here. The statute offers that the Commission shall "[e]nsure that *utility financial incentives are aligned* with helping customers use energy more efficiently and in

a manner that *sustains or enhances utility customers' incentives to use energy more efficiently*." Mo. Rev. Stat. § 393.1075.3(2) (emphasis added). Traditionally, the utility has a financial incentive to sell more of its product – power – and little to no financial incentive to create energy efficiency programming. Accordingly, to align the utility's financial incentives with the goal of energy efficiency, the parties all agree to the establishment of a throughput disincentive cost-recovery component. However, the parties disagree as to the nature of the mechanism.

OPC and the Commission's staff believe that, to comply with the law's mandate that the utility's financial incentive should be aligned, the throughput disincentive must also recognize the statute's mandate that this recovery component should not dis-incent "the utility customers' incentives to use energy more efficiently." *Id.* To properly balance both the utility and the customers' differing incentives, the throughput disincentive cost-recovery component must compensate the utility for only those revenues that it did not receive because of decreased energy sales attributable to the utility's energy efficiency program. Mo. Rev. Stat. §§ 393.1075.3 and .4; 4 CSR 240-20.093(1)(M), (1)(R), (1)(Y), (2)(C), (2)(G); Ex. 700, p. 4. If the company's MEEIA programs cause it to have reduced energy sales, the throughput disincentive component should be designed to compensate Ameren for that reduction in sales that its MEEIA programs cause – no more and no less.

All the parties concur that the Company should be paid in advance for the throughput disincentive. To ensure Ameren is compensated only at that level necessary to eliminate any disincentives to promoting energy efficiency, the law requires the use of evaluation, measurement and verification. *See* Mo. Rev. Stat. § 393.1075.4 (mandating that the Commission only approve programs that "*result in* energy or demand savings….") (emphasis added); Mo. Rev. Stat. § 393.1075.11 (requiring the Commission to provide "oversight" of MEEIA and "may

adopt rules and procedures and approve corporation-specific settlements and tariff provisions, [and] independent evaluation of demand-side programs, as necessary, to ensure that electric corporations can achieve the goals of this section."). Nonetheless, disagreement exists on whether to perform EM&V on the results of the Company's efforts in order to ensure the throughput disincentive payments already paid by customers were appropriate. Further, the parties disagree that if the level of payments was inappropriate that the payments should be "trued up" to match the EM&V results. OPC and the Commission's staff concur that once the amount of energy savings attributable to the company's MEEIA programs has been measured and verified, there should be a true-up of the revenues that Ameren collected. In this way, both the company and the ratepayers are held equal. This is eminently reasonable and consistent with the law.

In its latest filing, Ameren offers a throughput disincentive payment mechanism that does not use EM&V to ensure Ameren receives payment for only that which is attributable to its energy efficiency efforts. Ameren claims that "the Company would use retrospective EM&V to analyze Throughput Disincentive Net Shared Benefit ("TD-NSB") recoveries." (Doc. No. 273, p. 5). To be clear, this is not accurate. Ameren does not propose to conduct EM&V. Instead, Ameren offers a complicated and legally unsupported mechanism that continues to use "deemed" values. Ameren explains that "EM&V will value net-to-gross ("NTG") equal to 0.9 … [t]his *deemed* NTG would apply to both the Performance Incentive and TD-NSB." (Doc. No. 273, p. 6) (emphasis added). That is not the use of EM&V, that is the use of an assumption. And while customers are willing to use this assumption initially for purposes of determining the throughput disincentive component of the MEEIA charge on their bills, customers are not willing to continue this assumption indefinitely – ultimately the results of the utility's efforts must be

verified and the throughput disincentive payments trued up. Ameren's modification does not resolve the Commission's concern related to retrospective EM&V. In fact, it is not even EM&V.

EM&V determines the energy savings for each kind of efficient measure – light bulb, etc. – *and* whether the installation of that efficient measure is attributable to Ameren's programs. "Net-to-gross" is the component of EM&V used to determine the amount of energy savings caused by the company's MEEIA programs. Ameren's proposal to "deem" the net-to-gross means that the company does not intend to determine whether or not the energy savings were caused by Company's programs, it just assumes they did and assigns an arbitrary .9 level to that input. This modification is a perversion of EM&V and leaves out arguably its most important part – determining whether or not the company caused the energy savings.

After telling the Commission – incorrectly – that it will conduct EM&V, the company explains that "[t]he purpose of the comparative analysis [EM&V] will be to address the Commission's concerns related to "over-recovery" *but without changing revenues received and recognized* under the TD-NSB mechanism consistent with Generally Accepted Accounting Principles ("GAAP")." (Doc. No. 273, pp. 5-6) (emphasis added). In effect, Ameren says that due to an accounting concern it is not going to make any changes to revenue collected based upon the results of EM&V and will keep all the money it collects. Public Counsel explained in its Brief that Ameren's interpretation of the accounting rules is incorrect, but that in any event, accounting rules should not dictate the policy goals of the Commission.

Even if Ameren's interpretation is correct and accounting rules prevent the company from recording the revenue it collects from ratepayers if the amount is subject to later true-up, so what? If true, which it is not, Ameren is still collecting the money from ratepayers. If Ameren caused the energy savings, that money is Ameren's to keep. At most, Ameren is unable to record

the revenue on its books for a little over a year to allow for EM&V, but it still gets to keep the money which it has already collected. The company asserts, in vague terms, that this brief delay[1] misaligns the company's financial incentives. However, over the course of this case, Ameren has never provided any calculation to quantify this misalignment or offered more than broad, unsupported and unconvincing assertions regarding its purported negative impact. Such a history suggests that there is no misalignment and, instead, Ameren's accounting argument actually serves only one purpose – to facilitate its argument for a throughput disincentive mechanism that facilitates over-collection. Regardless of when Ameren can record the revenue, the fact remains that Ameren has the money in its bank account and the customers do not. If EM&V shows that Ameren over-collected, ratepayers should be repaid in full.

Ameren's modification offers ratepayers an illusory promise of a "credit" to the company's performance incentive to correct for over-collection. The company's proposal ignores the natural and logical relationship that should exist between the throughput disincentive and the performance incentive, and so, does not provide ratepayers any protection.

Given the way MEEIA is structured, when a company is successful in promoting energy efficiency, the throughput disincentive should be high, and so too should the performance incentive. The converse is also true. When the company is unsuccessful in promoting energy efficiency, its throughput disincentive will be low (because the company is not causing people to use less energy so it does not lose revenues), and so should the performance incentive – if any.

Importantly, again, the parties agree that to facilitate program administration the customers should pre-pay Ameren based on the value of *projected* energy savings. A risk that

---

[1] Recall, that very little of the money collected and subject to true up will have been collected at the beginning of the program year. On average, the throughput disincentive money collected by Ameren would be delayed from booking by a bit over six months.

results from pre-payment, however, is that in the event EM&V results show that Ameren's programs did not perform as expected, customers will have over- or under-paid Ameren. The only appropriate and legal solution to over- or under-payment of the throughput disincentive when pre-payment is used, is to true up.

The company continues to resist any true-up and proposes that ratepayers get a "credit" to the performance incentive to address future over-collection. This proposal is not an adequate substitute for a retrospective true-up to protect customers. As explained above, when the company's programs perform poorly, Ameren may not earn a large enough performance incentive award – if any – to repay customers. This scenario is not merely hypothetical. In fact, it is such a possibility that Ameren attempts to limit any refund to customers by saying that "the credit will not reduce the Performance Incentive below zero." (Doc. No. 273, p. 6). In other words, ratepayers pre-pay a set amount and when Ameren underperforms there is no possibility for a refund because the performance incentive would not exist.[2]

In contrast to the company's latest modifications, the terms of the *Amended Non-unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2* ("non-utility stipulation") actually address the Commission's concerns related to retrospective EM&V and provide for a true-up to protect ratepayers and the company.

Without conceding that Ameren is unable to record revenue for the throughput disincentive that is later subject to true-up, the non-utility stipulation provided certain concessions to accommodate Ameren's accounting concerns. Each month Ameren will bill 66.67% of the unrealized revenue value. Following each program year, EM&V will be

[2]To the extent that Ameren still receives a large enough performance incentive award to "credit" the over-collection from ratepayers when its programs underperform only illuminates another problem with Ameren's proposed performance incentive – namely, that it legitimizes inadequacy by rewarding the company for meeting only 70% of its goals.

performed to determine the realized amount of kWh savings actually achieved by Ameren in that year (Ex. 706, p. 2). If the results show that the amount of the actual revenue forgone by Ameren because of its efficiency program exceeds the amount previously billed by Ameren, then the company will be allowed to bill its customers for the remaining lost revenue up to 133.33% of its previous estimate (*Id* at 3). To the company's benefit, it will not have to refund any previously billed amounts below the 66.67% floor[3] (*Id.*) The non-utility stipulation addresses the Commission's concerns and is a better alternative to protect ratepayers.

Component of Supply-side Investment Reduction

Ameren's proposal to "include a demand based metric in its performance incentive calculation" lacks any detail about the demand component calculation, the demand performance metrics, or quantification of the supply-side investment reduction. All the parties have to evaluate is a single paragraph in its latest filing. The company has not offered the Commission or the parties any explanation of how its proposal will reduce supply-side investment and there is *nothing* to explain the Company's exceedingly vague proposal.

In fact, Ameren appears to recognize that its modification does not incent the company to reduce or delay supply-side investment in its suggestion of an industry-wide workshop to explore performance incentives that relate to deferring supply-side resources (Doc. No. 273). The company does state that it is willing to include a demand component in the performance incentive, but absent any details, the parties cannot evaluate the proposal to determine if there exists any merit or demerit.

[3] As an alternative, under the non-utility stipulation the company could collect 100% of its estimated throughput disincentive amount upfront, but one-third of that amount would be subject to later true-up and ratepayer refund if the forecasted kWh savings are not achieved.

Public Counsel and Staff have presented the Commission with a performance incentive that includes a detailed demand component to encourage supply-side investment reduction. Specifically, the non-utility stipulation provides for a demand-related performance incentive that is based on the demand (kW) savings associated with the installation of measures that impact future capacity requirements (Ex. 702, p. 9). The demand-related performance incentive gives Ameren a performance incentive meant to approximate the present value of the earnings opportunity that the company would receive on supply-side investments if the company had not pursued energy efficiency (Ex. 702, p. 9).

Conclusion

Ameren's proposed modifications are the latest attempt by the company to ensure that it will over-collect millions of dollars and receive a performance incentive without foregoing any supply-side earnings opportunities. These modifications have nothing to do with energy efficiency and do not address the Commission's specific concerns regarding retrospective EM&V for the throughput disincentive and supply-side investment reduction for the performance incentive.

Encouraging utility sponsored energy efficiency does not require the Commission to endorse whatever flawed and unlawful terms a utility desires. The MEEIA statute provides that "[t]he commission shall permit electric corporations to implement *commission-approved* demand-side programs[.]" Mo. Rev. Stat. § 393.1075.4 (emphasis added). Ameren's proposal fails to include 1) retrospective Evaluation, Measurement, and Verification ("EM&V") in calculating the throughput disincentive, and 2) a component of supply-side investment reduction in calculating the performance incentive as requested by the Commission. Ameren's bold attempt to dictate terms to the Commission should be rejected.

WHEREFORE, the Office of the Public Counsel submits its Reply to Ameren Missouri's Response to Commission Order.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

/s/ Tim Opitz
Tim Opitz
Senior Counsel
Missouri Bar No. 65082
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5324
(573) 751-5562 FAX
Timothy.opitz@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 5th day of October 2015:

/s/ Tim Opitz