

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day of
November, 2015.

Staff of the Missouri Public Service
Commission,

Complainant,

v.

Union Electric Company, d/b/a
Ameren Missouri,

Respondent.

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File No. EC-2015-0315

**ORDER GRANTING STAFF'S MOTION FOR SUMMARY DETERMINATION,
AND DENYING AMEREN MISSOURI'S MOTION FOR SUMMARY
DETERMINATION**

Issue Date: November 18, 2015

Effective Date: December 18, 2015

Procedural History

On June 1, 2015, the Staff of the Commission filed a complaint against Union Electric Company, d/b/a Ameren Missouri. The complaint alleges that Ameren Missouri failed to comply with the requirements of Commission Rule 4 CSR 240-20.093(1)(F). Specifically, the complaint alleges that Ameren Missouri failed to provide its independent evaluation, measurement and verification (EM&V) 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 Ameren Missouri 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 2014.

Ameren Missouri filed a timely answer to the complaint, and the Missouri Department of Economic Development – Division of Energy was allowed to intervene. The parties agreed that there are no factual issues in dispute and that the complaint could be resolved through cross-motions for summary determination. Staff and Ameren Missouri filed their respective motions for summary determination on August 28. Staff, Ameren Missouri, and the Office of the Public Counsel filed written responses to the motions for summary determination on September 16. Staff, Ameren Missouri and the Division of Energy filed written replies to those responses on September 25. All four parties participated in an oral argument before the Commission on October 2.

Findings of Fact

The following undisputed facts are taken from the Complaint, Ameren Missouri's Answer, Staff's motion for summary determination, and from Ameren Missouri's motion for summary determination.

1. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).
2. Ameren Missouri is a wholly-owned subsidiary of Ameren Corporation, a publicly-traded utility holding company. Its principal place of business is One Ameren Plaza, 1901 Chouteau, St. Louis, Missouri, 63103.
3. Ameren Missouri made its first filing for approval of a three-year demand-side program plan under MEEIA on January 20, 2012, in Commission File No. EO-2012-0142.

That plan was not adopted as filed, but rather was modified by terms of a unanimous stipulation and agreement approved by the Commission on August 1, 2012.

4. As part of the modified MEEIA plan, the Commission approved a demand-side investment mechanism – a DSIM - designed to allow Ameren Missouri to recover its MEEIA-related costs in a timely fashion.

5. Ameren Missouri's DSIM allows it to recover its revenue requirement from its customers through a separately-stated DSIM rate that can be adjusted periodically outside of a general rate case. The DSIM revenue requirement is the sum of three components: the DSIM cost recovery revenue requirement; the DSIM utility lost revenue requirement; and the DSIM utility incentive revenue requirement. Of the three components, only the utility incentive revenue requirement is at issue in this complaint.

6. The DSIM utility incentive revenue requirement is “the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits”¹ The calculation of the utility incentive revenue requirement is based on the performance of demand-side programs approved by the Commission and includes a methodology for determining the utility's portion of annual net shared benefits achieved and documented through EM&V reports for approved demand-side programs. In other words, Ameren Missouri is entitled to recover a portion of the annual benefits that result from implementation of the approved demand-side programs. One element in the calculation of those annual benefits is the utility's avoided costs.

7. The Commission's regulation defines avoided costs as:

[t]he costs savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided

¹ Commission Rule 4 CSR 240-20.093(1)(Q).

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)²

The emphasized sentence is at the heart of the Staff's complaint against Ameren Missouri.

8. Avoided costs are an estimate of future costs over at least a 20-year period. At the time Ameren Missouri's DSIM was created, that estimate of avoided costs was based on the methodology used in the preferred resource plan set forth in Ameren Missouri's MEEIA 1 Plan. Ameren Missouri made its next Chapter 22 Electric Utility Resource Planning Rules triennial IRP filing in 2014. For the 2014 IRP filing, the formula used in the methodology did not change, but the numbers plugged into the formula used to estimate avoided costs did change. As a result, the estimate of avoided costs also changed.

9. EM&V, as performed by Ameren Missouri's contractors, does not calculate or otherwise determine the avoided costs used to calculate net shared benefits. Instead, the avoided cost estimates are provided to the EM&V contractors by Ameren Missouri. When Ameren Missouri provided the estimate of avoided costs to its independent EM&V contractors for program year 2014, it gave them the estimated avoided costs as calculated using the inputs from the 2012 MEEIA 1 Plan methodology, not the estimated avoided costs calculated using the inputs from the 2014 IRP methodology. Staff asked Ameren Missouri to provide the avoided cost estimates using the inputs from the 2014 IRP methodology to the EM&V contractors, but Ameren Missouri refused to do so, contending

² Commission Rule 4 CSR 240-20.093(1)(F).

that the DSIM established in the 2012 stipulation and agreement does not require the use of updated avoided costs estimates.

10. Indeed, the DSIM as proposed by Ameren Missouri in its 2012 MEEIA filing, specifically subsection 2.6 and Table 2.12 of that filing, does not allow for the use of updated avoided cost estimates. However, paragraph 4 of the stipulation and agreement indicates Ameren Missouri's demand-side program is to be approved, subject to the terms and conditions of the stipulation and agreement. While paragraph 23 of the approved stipulation and agreement provides for variances from several rules that would otherwise be inconsistent with the provisions of the stipulation and agreement, subsection 4 CSR 240-20.093(1)(F) is not one of the rules from which a variance is provided. Therefore, Ameren Missouri's approved demand-side program remains subject to the requirements of that regulation, and Ameren Missouri is required to "use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs".

11. The Commission finds that in the context of this rule, methodology includes both the formula by which avoided costs are to be calculated and the inputs used in that formula. That interpretation is consistent with the goal of the MEEIA statute, which is to encourage the electric utility to implement energy-saving measures by protecting the utility's financial interests while also protecting consumers. To accomplish that purpose, the company's performance incentive must be connected to how much money ratepayers actually saved as a result of the company's MEEIA program. Therefore, to the greatest extent possible, the Commission encourages the use of actual numbers to calculate cost savings. In this case, that requires the use of updated estimates.

Conclusions of Law

A. Ameren Missouri is in the business of generating, transmitting and distributing electricity to customers for light, heat and power, and is thus an “electric corporation” and a “public utility” as defined in subsections 386.020(15) and (43), RSMo (Cum. Supp. 2013). As such, Ameren Missouri is subject to the regulatory jurisdiction of this Commission under Chapters 386 and 393, RSMo.

B. The Commission has jurisdiction over this matter because it involves Ameren Missouri’s obligations under MEEIA, a statute that the Commission is charged to administer.³ Ameren Missouri’s obligations regarding its MEEIA programs for Program Years 2013 through 2015 are set forth by the Commission’s rules and orders issued by the Commission in 2012 and 2013 accepting a stipulation and agreement and ordering the signatory parties to comply with the terms of that stipulation and agreement.

C. Section 386.390.1, RSMo 2000, authorizes the Commission to hear and decide complaints “setting forth any act or thing done or omitted to be done by 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 ...”

D. Commission Rule 4 CSR 240-2.070(1) authorizes Staff Counsel to file a complaint before the Commission.

E. Sections 386.570 and 386.590, RSMo 2000, provide that public utilities that fail to obey any law or rule or order of the Commission are subject to a penalty of not less than \$100 or more than \$2,000 for each offense. Section 386.600, RSMo 2000, provides

³ Section 393.1075.4, RSMo (Cum. Supp. 2013).

that the Commission's general counsel may bring an action in any circuit court of this state to recover such penalties.

Decision

The sole purpose of a performance incentive under MEEIA is to give the utility an earnings opportunity that will place shareholders in a financial position comparable to the earnings opportunity they would have had if those shareholders had instead made a future supply-side investment. Future earnings opportunities from supply-side investments are dependent on the dynamic character of the energy marketplace. If energy and capacity market prices increase, the utility may be able to earn greater profits. Conversely, if those market prices drop, the utility may be able to earn less profit on its investment. Thus, it is appropriate that the calculation of the utility's performance incentive should reflect the most current market price information available when avoided costs are calculated. That is the result obtained when the requirements of Commission Rule 4 CSR 240-20093(1)(F) are interpreted correctly, as described in Staff's complaint.

As a result, the Commission will grant Staff's motion for summary determination, and deny Ameren Missouri's motion for summary determination. Consistent with Staff's complaint, the Commission will order Ameren Missouri to provide its independent EM&V 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 Ameren Missouri as a performance incentive as a result of the energy efficiency savings the utility has achieved from its MEEIA demand-side programs for Program Year 2014.

Staff's complaint also asks the Commission to authorize its General Counsel to proceed to Circuit Court to seek financial penalties against Ameren Missouri. The

Commission will not authorize that proceeding. There is no need to seek to penalize Ameren Missouri for its different interpretation of the regulation. Future compliance is sufficient.

THE COMMISSION ORDERS THAT:

1. Staff's Motion for Summary Determination is granted.
2. Ameren Missouri's Motion for Summary Determination is denied.
3. This order shall be effective on December 18, 2015.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
and Coleman, CC., concur.
Rupp, C., dissents.

Woodruff, Chief Regulatory Law Judge