

**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

**STAFF'S REPLY TO AMEREN MISSOURI'S RESPONSE TO
STAFF'S MOTION FOR SUMMARY DETERMINATION**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Reply to Ameren Missouri's Response to Staff's Motion for Summary Determination* pursuant to Commission Rule 4 CSR 240-2.117(1), states as follows:

In its "Summary of Response " section, AmMo asserts that "Staff's complaint reflects a complete misunderstanding of the Company's MEEIA 1 Plan, as modified by the Commission-approved MEEIA 1 Stipulation, and of the applicable MEEIA rules."¹ As if that weren't enough, AmMo goes on to claim that "Staff's complaint also flies directly in the face of the terms of the Commission-approved DSIM that remains in full force and effect for Ameren Missouri's MEEIA 1 Plan" and "constitutes a collateral

¹ *Ameren Missouri's Memorandum of Law In Support of its Response In Opposition to the Staff's Motion for Summary Determination* ("AmMo's Memo"), p. 1.

attack on the Commission's order that approved that DSIM, and also violates the MEEIA rules."² AmMo then lists some of Staff's "fundamental mistakes," to-wit:

- **AmMo's claim:** "Staff misunderstands that the Commission approved a DSIM for the Company that included a utility incentive component, also known as the performance incentive, and that utility incentive component (which under the Commission's MEEIA rules is itself a methodology for determining the utility's portion of NSB to be received as its performance incentive) by its express terms specifically prohibits the use of avoided cost estimates that differ from those used to calculate the NSB that underlie the Commission-approved MEEIA 1 Plan[.]"³
- **The Truth:** Staff is, of course, well aware that the Commission approved a DSIM for AmMo that included a Performance Incentive Award ("PIA"), but strongly disputes AmMo's claim that it prohibits the use of avoided cost estimates that reflect reality. Staff explained this point in detail in its *Response to Ameren Missouri's Motion for Summary Determination*.⁴
- **AmMo's Claim:** "Staff misunderstands – and in effect seeks to change – the definition of "avoided costs" in the Commission's MEEIA rules. That definition, by its express terms, requires that the same methodology used to determine avoided cost estimates for the utility's most recent IRP preferred plan also be used to determine avoided cost estimates for a MEEIA Plan. However, the Staff substitutes the word "inputs", which does

² *Id.*

³ *Id.*, at p. 2.

⁴ *Staff's Response*, pp. 3, 5-6, 7, 9.

not appear in the rule, for the word “methodology,” which does appear in the rule and is unlawfully re-writing the rule itself[.]”⁵

- **The Truth:** As Staff explained in its *Response*, “[t]he word “methodology” as used in the rule necessarily encompasses the formula, the inputs, and the results of the calculation. What Rule 4 CSR 240-20.093(1)(F) requires is that the avoided costs from AmMo’s most recently adopted preferred resource plan be used in calculating NSB for the purposes of the PIA.”⁶
- **AmMo’s Claim:** “The Staff’s position, if adopted, would not only defy the MEEIA rules and the Commission-approved MEEIA 1 Plan, but would lead to illogical and absurd results because, among other reasons, it turns the award a utility can earn under a performance incentive mechanism into a lottery dependent largely on uncontrollable energy and capacity costs. If avoided cost estimates go down while a MEEIA plan operates (as has occurred in recent years), the utility would receive a far lower award regardless of demand and energy savings it can achieve, or how well it controlled its MEEIA program costs, yet if the opposite had happened (or happens later) the utility would receive a larger award, again, largely independent of the energy and demand savings it achieved or how well it managed its MEEIA budget. Moreover, it makes no sense for the Commission to approve a three-year MEEIA Plan based upon cost-effectiveness test results and customer impact analyses dependent

⁵ *AmMo’s Memo*, p. 2.

⁶ *Staff’s Response*, p. 9.

on one set of avoided cost estimates, and to then throw those cost estimates out simply because in the short term (a period of a couple of years) the estimates change, which happens all of the time. Notably, all avoided cost estimates are just that – estimates – and they are long-term (20 years or more) estimates that over time will likely go up, and down, and up, and down, again.”⁷

- **The Truth:** Staff’s position is not contrary to the MEEIA rules, as AmMo asserts, but is driven by Rule 4 CSR 240-20.093(1)(F). It does not lead to “illogical and absurd results,” as AmMo asserts, because it requires that the PIA be based upon the latest estimate of avoided costs. It is not Staff that “turns the award a utility can earn under a performance incentive mechanism into a lottery dependent largely on uncontrollable energy and capacity costs,” but the real-life fluctuations of the energy market.⁸

In the “Argument” section of its *Response*, AmMo first surveys those things the parties agree on. Here, AmMo makes an absolutely true statement: “[a]s Appendix B/Exhibit 1 shows, the percentage of NSB the Company is to receive depends on energy savings achieved.”⁹ However, the *amount* of the NSB is determined by multiplying the amount of energy saved by the avoided costs from AmMo’s “most recently adopted preferred resource plan” as required by Rule 4 CSR 240-20.093(1)(F).¹⁰ AmMo’s “most recently adopted preferred resource

⁷ *AmMo’s Memo*, pp. 2-3.

⁸ *See Staff’s Response*, pp. 10-12.

⁹ *AmMo’s Memo*, p. 4.

¹⁰ *Staff’s Response*, p. 11.

plan” is the one it submitted with its 2014 IRP. The value of energy efficiency is never measured solely by energy saved; it is measured by dollars saved, which are calculated by multiplying the units of energy saved by the market price per unit.

AmMo next turns to the areas where the parties disagree. It accuses Staff of “attempt[ing] to create a new standard” for summary disposition.¹¹ It asserts that “much of the Staff’s discussion has nothing to do with the Commission-approved DSIM at issue here[.]”¹² It characterizes Staff’s memorandum as “simply wrong.”¹³ In general, AmMo substitutes invective for analysis.

At page 6 of its *Memo*, AmMo makes this argument:

The rule, by its plain terms, requires that when a MEEIA plan is submitted the utility at issue must have used the same *method* to come up with the avoided costs estimates used in the calculations reflected in the MEEIA plan (e.g., TRC calculations, customer impact calculations, NSB calculations), as it used in its most recent preferred plan, with “most recent” referring to most recent preferred plan in place prior to the preparation of the MEEIA plan.¹⁴

But “most recent” is NOT measured from the preparation of the MEEIA plan, as AmMo asserts, it is measured from the moment that whatever calculation is being performed that requires avoided costs. Administrative rules are subject to the same rules of construction as statutes, which means that the words employed are to be understood in their plain and ordinary meaning.¹⁵ That meaning is found in the dictionary.¹⁶

¹¹ *AmMo’s Memo*, p. 4.

¹² *Id.*, p. 5.

¹³ *Id.*

¹⁴ *Id.*, p. 6 (emphasis in original).

¹⁵ ***Mullins v. Director of Revenue***, 946 S.W.3d 770, 771 (Mo. App., E.D. 1997).

¹⁶ ***Derousse v. State Farm Mutual Ins. Co.***, 298 S.W.3d 891, 895 (Mo. banc 2009).

“Recent” means “[o]f, belonging to, or happening at a time just before the present.”¹⁷

When the NSB is calculated at the end of AmMo’s three-year MEEIA Cycle 1 Plan in 2015, the “most recently adopted preferred resource plan” is necessarily the one from 2014 and not the one from 2011.

What’s this all about, anyway? It’s about money, of course. AmMo explains it succinctly at page 8 of its *Memo*: “The 20+ year estimates of avoided costs fell in the past couple of years. They could have risen. They will change again.”¹⁸ Unfortunately for AmMo, the calculation of NSB for purposes of determining its PIA is occurring at a moment when the avoided costs that Rule 4 CSR 240-20.093(1)(F) requires the Evaluators to use is lower than when AmMo’s MEEIA Cycle 1 Plan started. This puts the lie to the last sentence of AmMo’s *Memo*:

[AmMo’s] EM&V contractors took updated installed measures information, updated program cost information, updated rebate cost information and updated opt-out information and, *using the avoided costs the rules and the Stipulation said they should use*, calculated NSB for the 2014 program year.¹⁹

In fact, AmMo’s contractors did NOT use the avoided costs the rules and the Stipulation said they should use. Rule 4 CSR 240-20.093(1)(F) required that they use the 2014 avoided costs, not the 2011 avoided costs. Nothing in the *2012 Stipulation* contradicts the rule. It follows that Staff deserves a favorable determination as a matter of law and AmMo does not.

¹⁷ *Webster’s II New College Dictionary*, 925 (2001).

¹⁸ *AmMo’s Memo*, p. 8.

¹⁹ *Id.* (emphasis supplied.)

WHEREFORE, having fully replied to AmMo's *Response to Staff's Motion for Summary Determination*, Staff prays that the Commission will determine that AmMo has violated a statute and Commission rule and Commission orders as alleged by Staff; direct AmMo to provide the appropriate avoided costs to its Evaluators, and authorize the Commission's General Counsel to seek appropriate penalties for those violations in Circuit Court; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **25th day of September, 2015**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case, which date is not later than the date on which this pleading is filed with the Commission as required by Rule 4 CSR 240-2.117(1)(B), relating to Summary Determination.

/s/ Kevin A. Thompson