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**

POST-HEARING REPLY BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

Tim Opitz (#65082)
P O Box 2230
Jefferson City, MO 65102
(573) 751-5324
(573) 751-5562 FAX
timothy.opitz@ded.mo.gov

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REPLY BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and for its reply brief states as follows:

Introduction

The principles in this case are not complicated. To encourage Ameren to pursue all cost-effective energy efficiency savings, the Commission may approve a portfolio of energy efficiency programs and a cost-recovery mechanism. First, the company should recover prudently incurred program costs. Second, Ameren should be made indifferent as to the pursuit of energy efficiency compared to pursuit of traditional supply-side infrastructure. This means compensating the company for the energy it does not sell because of its energy efficiency portfolio. Third, Ameren should get an earnings opportunity based on measured and verified energy savings.

Rather than offer a plan that accomplishes these goals, Ameren offers an illegal and unnecessarily complicated plan reflected in its *Non-unanimous Stipulation and Agreement* filed June 30, 2015 ("Ameren stipulation"). The entirety of Ameren's discussion in its initial brief regarding the operation, design, and accounting constraints of its complicated cost-recovery mechanism is an attempt to distract the Commission from the fact that Ameren is asking for more money to achieve less energy savings than in Cycle 1, using the same flawed cost-recovery mechanism as Cycle 1, and even though evaluation, measurement, and verification ("EM&V")

shows that Ameren over-collected and double-recovered millions of dollars from ratepayers in that time period. Despite benefitting from substantial over-collection in Cycle 1, Ameren sets itself up for more over-collection in Cycle 2 by seeking more money under *every* component of its proposed cost-recovery mechanism. The Company's audacious request is not about energy efficiency – it is about money.

The other briefs offered in support of Ameren's stipulation continue to affirm Public Counsel's argument that Ameren's stipulation has nothing to do with energy efficiency. In its initial brief, the Division of Energy ("DE") never even mentions that energy and demand savings should be subject to EM&V (*See* Division of Energy Brief). Rather than advocate and advance measured and verified energy efficiency, the signatories to Ameren's stipulation have chosen to support an approach that does nothing more than ensure that Ameren will continue over-collecting millions of dollars from ratepayers, illegally double-collecting revenue on the same unit of energy, and otherwise violating the law.

In support of its stipulation, Ameren represents that its complicated cost-recovery mechanism is the only option available. That is not true. Public Counsel, the Staff of the Missouri Public Service Commission, the Midwest Energy Consumers' Group, the Missouri Industrial Energy Consumers, Earth Island Institute d/b/a Renew Missouri, and the Sierra Club have presented the Commission with a better alternative – the *Amended Non-unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2*, filed on July 8, 2015 ("non-utility stipulation"). The non-utility stipulation provides the Commission with a comprehensive solution to resolve this case. It provides a practical and effective way to resolve the disputes among stakeholders regarding the energy savings target. It includes additional programs to enable small businesses and multi-family low-income customers to participate in,

and benefit from, energy efficiency programs. The non-utility stipulation replaces the complicated and inaccurate cost-recovery mechanism offered by the company with a mechanism that balances the interests of the company and ratepayers. And rather than offering a single performance incentive, the non-utility stipulation provides multiple components designed to incent Ameren to increase customer participation and pursue programs that will benefit all ratepayers. Importantly, recovery under any of the components of the non-utility mechanism is based on rewarding the company for measured and verified energy savings as required by law. The non-utility stipulation is the best choice before the Commission to accomplish the goals of MEEIA, protect ratepayers, pursue cost-effective energy efficiency, and provide the company an opportunity to earn millions of dollars.

Ameren's discussion of law

In its brief, Ameren requests variance from at least 34 commission rules (Ameren Brief, pp. 12-13). Implicit in the company's request is recognition by Ameren that its stipulation violates the Commission's rules. The only justification for these variances offered by Ameren is that the "Commission granted similar variances in Ameren Missouri's last MEEIA Plan filing … [t]he variances requested should thus be granted." (Ameren Brief, p. 13). What Ameren fails to mention is the egregious over-collection of millions of dollars from ratepayers and other lessons learned by all parties since the Cycle 1 stipulation. There is *no* valid justification for the variances offered. Experience has shown that granting the excessive variances in Cycle 1 was a mistake that should not be repeated.

In its recitation of law, Ameren explains that the Court of Appeals "upheld the Commission's MEEIA rules, finding that MEEIA allows for adjustment between rate cases, and also finding that utility lost revenues are a cost within the context of MEEIA." (Ameren Brief, p.

12). But what Ameren fails to explain to the Commission is that rather than seeking "lost revenues" under the Commission's rules for Cycle 2, the company seeks a far more liberal recovery of revenues. If Ameren did seek recovery of "lost revenues," its recovery would be limited to the "net reduction in utility retail revenue … that occurs when utility demand-side programs approved by the commission … cause a drop in net retail kWh delivered to jurisdictional customers below the level used to set the electricity rates." 4 CSR 240-20.093(1)(Y). The rules further limit lost revenues to "only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission … and measured and verified through EM&V." 4 CSR 240-20.093(1)(Y). But Ameren does not constrain itself by submitting a request authorized by law. Instead, Ameren requests a more lucrative throughput disincentive recovery mechanism that pays Ameren based on projected or "deemed" energy savings never to be measured, verified, or trued-up.

Notably, Ameren fails to provide any analysis why its request to be paid based on projected energy savings rather than measured and verified energy savings is legal. Even if the company is correct, which it is not, that Generally Accepted Accounting Principles ("GAAP") prevent Ameren from recording revenues that are later subject to true-up, Ameren offers no rationale why it should be paid twice when energy savings are less than projected – once for not selling it and then again for selling it.

Non-energy Benefits

Perhaps most disturbing about DE's support of Ameren's proposal is its argument that the Ameren stipulation is beneficial to all ratepayers because of NEBs. Charges on customer's electric bills should be for public utility service. The MEEIA statute allows an additional charge to make the company indifferent as to lost revenues because of its pursuit of energy efficiency

and provides an earnings opportunity related to an energy efficiency portfolio. The statute does not provide that customers must pay for NEBs. In fact, the Commission need only look to the term used by DE – *Non-energy* Benefits – to see that including these costs on an electric utility bill is improper.

Even if the statute allowed consideration of NEBs, which it does not, the broad generalizations related to NEBs offered in this case are an insufficient evidentiary basis upon which the Commission can rest its decision. In its brief, DE asserts that NEBs include "improved health and safety, cleaner air, and reduced arrearages" that result from energy efficiency improvements. However, no witness specifically identified the NEBs that should be considered in this case. Moreover, the testimony offered in this case in support of NEBs merely suggests that NEBs may be quantifiable, but no evidence was offered to quantify any of the NEBs that were vaguely identified. DE also failed to offer any evidence as to how any undefined and un-quantified NEBs should be attributed to customers in each class as would be required under the MEEIA statute. How does "cleaner air" get divided among residential and commercial classes? How do improvements to "health and safety" impact industrial ratepayers? Perhaps there is a way to allocate any possible NEBs, but no attempt to do so was made in this case. These are "benefits" that are not identified, quantified, or attributed to any one class of customers, and so, should not be considered in this case. DE's attempt to assert that the utility proposal is beneficial to all customers because of NEBs is not supported by competent and substantial, or any, evidence. The fact that DE has to rely on an illegal and unsupported argument to justify its signature on the Ameren stipulation is telling.

Energy savings target

Ameren tells the Commission that the energy savings target in its stipulation was an increase of its initial proposal (Ameren Brief, p. 13). However, the Company does not explain that its initial energy savings target was artificially low. Nor does the company explain that the increased savings in the Ameren stipulation improperly credit Ameren for naturally occurring energy efficiency savings for CFL and Public Buildings programs.

Ameren touts that it has agreed to work collaboratively with stakeholders to identify additional energy savings opportunities (Ameren Brief, p. 14). Noticeably absent in the company's brief or Ameren's stipulation is *any* description of the process for parties to follow. Without a defined process, the outcome of stakeholder efforts to identify additional energy savings remains subject to the whims of the company; this is not an arrangement designed to succeed.

Ameren's Throughput Disincentive – Net shared Benefits Model

Rather than offer a plan that accomplishes the goal of aligning the company's financial interests with helping customers use energy more efficiently, the Ameren stipulation offers a plan that is essentially the same as Cycle 1 (Ameren Brief, p. 16). The throughput disincentive cost-recovery component should provide cash to the company to compensate the utility for revenues that it did not receive because of decreased energy sales due to the 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. Instead, the company proposes a mechanism that will repeat the same mechanism from Cycle 1 that enabled Ameren to over-collect millions of dollars (*See* Ex. 803, p. 11; Ex. 118; Ex. 710, pp. 17-18). In its brief, the company spends several pages explaining in vague terms the unnecessarily complicated throughput disincentive cost-recovery mechanism

contained in its stipulation (*See* Ameren Brief, pp. 16-24). Nowhere in the company's brief does it tell the Commission, in plain language, the amount of money that Ameren wants from ratepayers in Cycle 2. If Ameren were to have told the Commission what the company was asking for, it would have said that it wants "a larger share of net benefits." Of course, what that really means is that the company wants more money than it collected in Cycle 1. The technical terms used by Ameren are meant to sound reasonable but do not explain what the company is seeking from the Commission.

Instead, the company vaguely explains to the Commission that under its "shared benefits approach" Ameren recovers the throughput disincentive by "retaining a percentage of the overall net benefits." (Ameren Brief, p. 18). What the company does not explain to the Commission is that under Ameren's approach, the utility gets money up-front, while ratepayers' "share" of benefits is based on projected numbers accruing over 20 years never to be measured, verified, or trued-up – meaning that the benefit to customers may never materialize (Ex. 707, p. 8). The company further describes how it seeks a modified two-tiered approach to address a concern regarding rate case timing (Ameren Brief, pp 16-17). Ameren extols this as an improvement, but does not tell the Commission that the rate case timing adjustment can only *increase* the throughput disincentive recovery (Ameren Brief, p. 17; *See* Ex. 703, p. 18). That means that this "concession" by Ameren will benefit the company and will never benefit ratepayers.

Further, Ameren's explanation in support of its two-tiered mechanism serves to point out the greatest deficiency in the utility's proposal. Ameren explains that its revised throughput disincentive mechanism "incorporat[es] a measured and verified amount of foregone electricity sales." (Ameren Brief, pp. 21-22). The company seems to ignore that the law requires *all* foregone electricity sales to be measured and verified. Ameren also attempts to claim that the

company uses EM&V in its proposal, explaining, "the controversy is not *whether* EM&V should be used, but *how* it is used." The company's argument is nonsense. Ameren says that the EM&V results should be used, just not retrospectively (Ameren Brief, p. 23). The impact of following Ameren's proposal is that even if evaluation and measurement showed that the company's programs did not cause the energy savings that had been projected, Ameren still collects all the money. This is far different from a methodological dispute, as the company would have the Commission believe. Ameren's suggestion to measure some of the energy savings attributable to its programs and then do *nothing* to remedy any over-collection from ratepayers is a perversion of MEEIA. Once the energy savings attributable to Ameren's energy efficiency programs are measured and verified, that information should be applied to ensure that Ameren is compensated appropriately for its efforts, nothing more and nothing less.

Ameren attempts to support its stipulation's unlawful omission of meaningful measurement and evaluation by explaining that its plan would calculate the throughput disincentive energy savings by using the deemed TRM value for "only those measures actually implemented, just as was done in cycle 1." (Ameren Brief, p. 18). Setting aside that the mechanism in Cycle 1 resulted in Ameren over-collecting millions of dollars from ratepayers, and so, should not be copied, imitated, or repeated in any way, Ameren's argument misses the mark. Merely counting the number of energy efficient measures installed – for example, light bulbs – does not tell us the energy savings caused by Ameren's programs. EM&V must be performed to determine 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. Only then can the Commission ensure that Ameren is compensated for the energy savings caused by its programs.

Under Ameren's stipulation, ratepayers would compensate Ameren for the projected decrease in revenue caused by the company's energy efficiency program. If Ameren's programs cause less energy savings than projected, Ameren will have sold that power and its revenues would not decrease by the same amount already collected from ratepayers. Thus, if energy savings are less than projected, Ameren is paid twice for the same energy. Requiring a true-up after measurement and verification of energy savings does not create a financial disincentive to energy efficiency; it simply provides what the law already requires, that Ameren only receive compensation for the revenues foregone because of its MEEIA programs and it prevents Ameren from earning money twice on the same unit of energy – once for selling it and once for not selling it.

Ameren attempts to discredit evaluation and measurement by explaining that the "EM&V process is subjective and different contractors can easily come to different conclusions," but nowhere in its initial brief does the company dispute that the law requires measurement and verification of energy savings (Ameren Brief, pp. 7-8). The experience from Cycle 1 shows that the results of the EM&V process generally have not been contentious (Ex. 803, p. 15). Ameren even states in its initial brief that it has relied on EM&V results for its own purposes (Ameren Brief, p. 18). However, whenever EM&V shows that Ameren over-collected millions of dollars Ameren seeks to discredit the process. Ameren does not want EM&V because it does not want anyone to know how much it over-collects and to avoid exposure to true-up.

Accounting Standards

Ameren asserts, in error, that the Generally Accepted Accounting Principles ("GAAP") prevent Ameren from recording the revenues associated with the throughput disincentive "as and when the energy efficiency programs are operated." (Ameren Brief, p. 8). Thus, Ameren argues

that it cannot true-up the throughput disincentive component based on measurement and verification of the energy savings attributable to Ameren's MEEIA programs.

GAAP requirements should not control the policy decisions of the Commission. Ameren's argument is akin to the tail wagging the dog. Reasonable ratemaking policies should be enacted that balance appropriately the interests of utility customers and shareholders, and approved accounting methodologies should be employed by utilities to record accurately the financial results of those policies (Ex. 706, p. 5). Experience from Cycle 1 shows that without a true-up, Ameren has over-collected millions of dollars. To the extent that Ameren's MEEIA throughput disincentive component is based on "deemed" or forecasted values, reasonable true-up procedures should be applied in order to balance the interests of the company and ratepayers (Ex. 706, p. 6). Ameren's attempt to convince the Commission that its actions are subservient to the GAAP is merely an effort to preserve the cost-recovery mechanism that has enabled Ameren to over-collect millions of dollars from ratepayers in Cycle 1.

Despite the fact that the Commission is not bound to accept direction from GAAP, Ameren has attempted to say that adherence to GAAP requirements prohibits the Commission from doing the right thing – preventing over-collection from ratepayers in Cycle 2. Ameren witness Ms. Barnes testified that compliance with ASC 980-605-25, as interpreted by Ameren, "applies to any alternative revenue program that adjusts billings to compensate the utility for demand-side management initiatives." (Ex. 103, p. 7). Under Ms. Barnes interpretation, ASC 980-605-25 applies in this case to prevent any truing-up of the amounts collected for the throughput disincentive (Ex. 103, p. 10-11).

Staff's Mr. Oligschlaeger offers a more reasonable interpretation that ASC 980-605-25 does not apply in this case. Mr. Oligschlaeger testified that ASC 980-605-25 applies when

utilities seek to record regulatory assets to track the impact of energy efficiency measures prior to billing and collecting the money (Ex. 707, p. 3; Tr. Vol. 3, pp. 901-902). Only when a utility seeks to recognize revenues associated with throughput disincentive recovery as a regulatory asset does this accounting standard apply (Ex. 707, p. 3). Importantly, under both stipulations presented to the Commission, Ameren would bill and collect the amounts intended to compensate the company for the throughput disincentive *concurrently* in rates through the energy efficiency charge (Ex. 707, p. 3). Thus, because Ameren would not record a regulatory asset, ASC 980-605-25 does not apply under either stipulation presented to the Commission.

Ameren states that it is the consequence of Generally Acceptable Accounting Principles ("GAAP") that "gives rise to the largest controversy presented in this case." (Ameren Brief, p. 7). It is incredible then, that Ameren failed to offer any independent evidence, including citations to accounting literature or to the actions of regulatory bodies in other jurisdictions, to support its claims of adverse accounting consequences of truing-up collections for the throughput disincentive component. Even though – in Ameren's own view – the accounting standards are a central issue in this case, the company did not offer the testimony of any representative of a public accounting firm to support its position. Nor did the company enter into evidence any memoranda, opinions, or emails directly supporting the company's interpretation of GAAP. Ms. Barnes did not bother to search for any proceedings in other jurisdictions wherein a utility raised similar accounting concerns pertaining to recovery of lost revenue amounts (Tr. Vol. 2, p. 484). Ameren's other accounting witness, Mr. Hoffman, testified that in his 38 years of experience he is not aware of any proceedings in any other jurisdiction in which a utility raised identical or similar concerns related to lost revenue recovery (Tr. Vol. 1, p. 197). Ms. Barnes further testified

that she had not spoken with any specific companies to find out if other utilities are faced with similar accounting concerns (Tr. Vol. 2, p. 494).

In contrast to the minimal efforts of Ameren's witnesses, Mr. Oligschlaeger researched whether other utilities have raised similar or identical accounting concerns as Ameren has in this case (Ex. 707, p. 5). In all the orders Mr. Oligschlaeger reviewed regarding rate recovery of throughput disincentive, no other utility raised accounting concerns similar to those raised by Ameren (Ex. 707, p. 5). Sierra Club witness Mr. Woolf testified that all of the lost revenue adjustment mechanisms of which he is familiar "require EM&V to be performed to demonstrate the actual amount of lost revenues saved, so that the company is compensated for what it's actually lost and not a hypothetical estimate." (Tr. Vol. 2, p. 400).

With the application of GAAP being such an important issue to Ameren, one would expect the company to have secured the advice from the accounting firms it contacted in a written opinion, memorandum, or even an email. But Ameren did not provide any such support for its interpretation of the accounting rules. In the words of Staff's Mr. Oligschlaeger, "Ameren Missouri's testimony on this issue is long on broad assertions, very short on supporting evidence." (Ex. 707, p. 5). It is possible the company overlooked this when preparing its case. However, given the number of personnel and attorneys that Ameren engaged in this case, it is more likely that none of the auditing firms Ameren admits it contacted were willing to endorse the company's interpretation in a writing to be filed with the Commission.

Ameren's Performance Incentive

Ameren's proposal asks for *more* money than it received in Cycle 1 for reaching lower energy savings targets than its goals in Cycle 1. The audacity of the request must not be lost on the company, as evidenced by the cryptic language it uses to "describe" its proposal. For

example, in describing the money Ameren would get for reaching 100% of its energy savings target under the Ameren stipulation, Ameren states "the percentage of net shared benefits used to calculate the performance award was decreased." (Ameren Brief, p. 26). The phrasing of that statement may sound like the company was foregoing something, perhaps even requesting less money from ratepayers. That is not the case. Ameren explains – in a footnote – that under its stipulation, Ameren gets at least $5 million dollars more for its performance incentive (Ameren Brief, p. 26). Even though Ameren says, "decrease" what actually happens is an *increase* in the money Ameren collects from ratepayers.

Non-utility Stipulation

Public Counsel and the signatories to the non-utility stipulation have presented the Commission with a better option. The terms of the non-utility stipulation and agreement remove disincentives to Ameren's promotion of demand-side programs, properly incent Ameren in the promotion of demand-side programs, and balance the financial interests of ratepayers and the company while achieving verifiable energy savings and creating a pathway for even more energy savings.

The non-utility stipulation provides the only practical way to fix the low energy savings targets that stem from Ameren's flawed market potential study and to resolve future conflicts. To do so, the non-utility stipulation includes a process for a third-party mediator to select a panel of experts who may recommend possible increases in the projected kWh savings of the total portfolio for program years 2017 and 2018 (Ex. 802, p. 11). This process can address and resolve the many concerns stakeholders have raised in this case about the energy savings levels for MEEIA Cycle 2 (*Id*.).

In addition to providing a path to resolve contentious issues and to identify and pursue additional energy savings during Cycle 2, the non-utility stipulation has a higher energy savings target than the company's initial application. (*See* Doc. No. 119 and Ex. 800). The non-utility stipulation and agreement adds the energy savings and program costs associated with the Small Business Direct ("SBDI") program and the Multi-Family Low Income ("MFLI") program contained in the Ameren stipulation (*See* Doc. No. 119).

The cost-recovery mechanism outlined in the non-utility stipulation has three main components: program costs, net throughput disincentive, and performance incentives. Importantly, these components are designed to avoid the multitude of flaws in the cost-recovery mechanism proposed in Ameren's stipulation. The first component is program cost. The company should receive program costs roughly contemporaneous with the occurrence of those costs (Doc. No. 119). These costs should continue to be subject to thorough prudence review as long as they are collected from ratepayers. As provided in the non-utility stipulation, the operation of this cost recovery component should be similar to the Net Program Cost component in the Rider EEIC for MEEIA Cycle 1 (Doc. No. 119).

The second component is the net throughput disincentive mechanism. This is designed to allow Ameren to bill and retain the unrealized revenue caused by its promotion of energy efficiency programs (Ex. 702, p. 5). As proposed in the non-utility stipulation, the throughput disincentive component will make Ameren financially indifferent to whether or not it promotes demand-side programs (*Id.*). Importantly, under terms of the non-utility stipulation, this does not require complicated and unnecessary assumptions about the present value of forecasted energy savings. That is because this mechanism will compensate Ameren on an as-incurred basis. And

because the energy savings will be subject to evaluation and measurement, there is less risk to ratepayers that the company will continue to over-collect millions of dollars.

The third component of the cost-recovery mechanism is comprised of the performance incentive. This component contains multiple subparts to incent the company to pursue energy efficiency in a manner that is beneficial to all ratepayers. First, the non-utility stipulation provides for a demand-related performance incentive that would be based on the demand (kW) savings associated with the installation of measures that impact future capacity requirements (Ex. 702, p. 9). The demand-based performance incentive described above would give Ameren Missouri the opportunity to earn approximately $75.7 million. However, unlike the utility stipulation, the company will not receive any incentive until it exceeds 100% of its target. Ameren should not be rewarded for failing to achieve its goals. Moreover, incenting demand reductions can enable all ratepayers to experience benefits from a MEEIA portfolio regardless of participation (*See* Ex. 703, pp. 4-6). A portfolio that reduces the utility's capacity requirements is more likely to reduce the need of the utility to build a power plant in the future (*Id.*). This mechanism is reasonable, and compared to the proposal in Ameren's stipulation, the preferable way to provide Ameren with a performance incentive.

As a way to increase ratepayer participation, the non-utility stipulation provides for a customer-participation performance incentive. This is the second component of the performance incentive (Ex. 802, p. 8). To encourage Ameren to pursue programs that have broad customer impact and ensure that low-income customers also can benefit from MEEIA, the customer-participation performance incentive will be made available to the company to include 5% of program costs associated with Ameren Missouri's Custom/Standard or residential programs for

multi-family low-income units and/or Ameren Missouri's multi-family low-income direct install program (*Id.*). Under this incentive Ameren may earn an additional $537,500 (*Id.*).

In addition to the demand-related performance incentive and the customer participation performance incentive, there is the possibility for a third performance incentive component. An energy-related (kWh) performance incentive may be available based on the recommendations of the panel of experts convened by a third-party mediator as described in the non-utility stipulation (Doc. No. 119). If the Commission orders a change to the company's kWh savings target for 2017 and 2018, it may provide the company a third performance incentive based on the kWh savings achievement at the following levels: $2 million at 105%, $3 million at 130%, and $5 million at 150% (Ex. 802, p. 12).

In total, the non-utility stipulation provides the Commission with a comprehensive solution to resolve this case that balances the interests of the company and ratepayers while achieving verifiable energy savings and creating a pathway for even more energy savings.

Conclusion

Throughout this case Ameren has repeatedly referenced the "permissiveness" of the MEEIA statute whenever other parties, or even Commissioners, question the company's program design or the company's proposed cost-recovery mechanism. In its initial brief, Ameren states, "MEEIA is permissive in nature and, by its express language, does not require utilities to offer demand-side programs." (Ameren Brief, pp. 11-12). Ameren goes on to say "the Commission is thus responsible for reviewing the evidence and making those findings that are required to approve demand-side programs." (Ameren Brief, pp. 11-12). In so doing, Ameren is saying that the Commission is a rubber stamp for whatever the company wants. However, that is not the law. *See* Mo. Rev. Stat. §393.1075. 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). Under the law, the Commission is not the rubber stamp Ameren would like it to believe, and the Commission should not adopt such a posture of its own volition.

The Commission is empowered to tell Ameren under what conditions Ameren can choose to earn millions of dollars while pursuing energy efficiency programs – programs that the company, at least arguably, should be pursuing whether or not it has a MEEIA portfolio (Tr. Vol. 2, p. 462). Public Counsel, the Staff of the Missouri Public Service Commission, the Midwest Energy Consumers' Group, the Missouri Industrial Energy Consumers, Earth Island Institute d/b/a Renew Missouri, and the Sierra Club have presented the Commission with an alternative plan that accomplishes the goals of MEEIA, protects ratepayers, pursues cost-effective energy efficiency, will enrich the shareholders of Ameren Missouri, and is legal. Rather than endorse the flawed Ameren stipulation, the Commission should issue an order adopting the terms of the non-utility stipulation.

WHEREFORE, the Office of the Public Counsel submits its reply brief and requests that the Commission issue an order adopting the terms of the Amended Non-utility Stipulation and Agreement.

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 26th day of August 2015:

/s/ Tim Opitz