

**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) **File No. EO-2015-0055**
Energy Efficiency as Allowed by MEEIA.)

MISSOURI DIVISION OF ENERGY’S REPLY BRIEF

COMES NOW the Missouri Division of Energy (“DE”), by and through the undersigned counsel, and for its *Reply Brief* states:

In its initial brief, Staff states that DE, as well as Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) and the Natural Resources Defense Council (“NRDC”), present a false choice for the Public Service Commission (“Commission”) in this case; according to Staff, this is due to the fact that if the Commission chooses not to approve the Company’s Missouri Energy Efficiency and Investment Act (“MEEIA”) Cycle 2 Plan as modified by the June Non-Unanimous Stipulation and Agreement (“Company Agreement”), then all energy efficiency in Ameren Missouri’s service territory will not end.¹ However, this is a gross mischaracterization of DE’s position and its testimony in this proceeding. Furthermore, Staff’s reasons for why the Signatories to the Company Agreement posit a false choice are themselves conclusory and are unsupported by the record. DE witness Mr. Hyman stated in his surrebuttal testimony that:

Discontinuation of an energy efficiency portfolio would, at the very least, create major uncertainty for customers, program partners, and the Company while drastically reducing the potential markets for energy efficiency in Missouri in the short term. ... Rejection of the Company’s proposed MEEIA portfolio would also lead to the need for increased future capacity additions, as acknowledged by Mr. Rogers. Notably, the Company’s 2014 Integrated Resource Plan indicates that

¹ Staff’s Initial Post-Hearing Brief, p. 6.

energy efficiency is one of the least-cost options when compared to supply side resources, meaning that efficiency is a better investment for both the Company and ratepayers than a number of physical capacity additions.²

While DE acknowledges that some of Ameren Missouri's customers would continue to adopt energy efficiency measures absent a Commission-approved MEEIA portfolio, the energy efficiency adoption rate would be significantly lower if there were no Commission approved MEEIA portfolio in Ameren Missouri's service territory. DE has never argued that naturally-occurring energy efficiency would end absent support from the Company; however, Company-supported energy efficiency efforts (as supported under MEEIA) would surely be thrown into a state of uncertainty, or even halted, absent a Commission-approved portfolio.

Staff also asserts that MEEIA is nothing more than a way for electric utilities to obtain cash for electricity which it does not sell.³ In contrast, DE recognizes that utility sponsored energy efficiency programs are more cost-effective in the long run than requiring ratepayers to pay for more costly supply-side resources in the future. MEEIA enables utility-sponsored energy efficiency programs by allowing for: (a) program cost recovery; (b) eliminating the throughput disincentive associated with the loss of electricity sales due to utility-sponsored energy efficiency programs; and (c) by creating an earnings opportunity for meeting targeted energy savings in order to compensate the utility for the lost opportunity to earn a return on future supply-side investments due to the decreased demand for electricity associated with the utility's energy efficiency programs. Contrary to Staff's assertion that the Company's energy efficiency programs

² Exhibit 201, DE witness Hyman surrebuttal, p 20, ll. 2-4 & 8-13.

³ Staff's Initial Post-Hearing Brief, p. 6.

could exist outside of MEEIA,⁴ substantial utility-sponsored energy efficiency programs may only exist under MEEIA since, in the absence of the Act's enabling mechanisms, the Company would have no incentive to avoid selling electricity and promoting energy efficiency would be detrimental to Ameren Missouri's shareholders.⁵ The Company Agreement meets the requirements of MEEIA by aligning Ameren Missouri's financial interest with helping its customers use energy more efficiently, whereas the Non-Company agreement would misalign the Company's interests by departing from the previously accepted Throughput Disincentive – Net Shared Benefits and energy-related Performance Incentive mechanisms utilized in Cycle 1.⁶ The Company Agreement is therefore a more cost-effective way to provide electricity service to Ameren Missouri's customers than having no Commission-approved MEEIA portfolio.

Staff also states that the rejection of the Company Plan does not preclude Ameren Missouri from filing another application for a MEEIA program even if Cycle 2 is slightly delayed.⁷ DE agrees that Ameren Missouri is not prohibited from filing another MEEIA application if the Commission rejects the Company Agreement, but Staff – not being a part of the Company's management team – cannot guarantee that Ameren Missouri will file another MEEIA application if the Commission rejects the Company Agreement. Rejection of the Company Agreement would also wrongly signal to the Company that the Commission does not value its efforts to provide utility-sponsored energy efficiency programs, which could provide less incentive for Ameren Missouri to invest additional time and resources on refiling a Cycle 2 application. Most importantly,

⁴ Staff's Initial Post-Hearing Brief, p. 6.

⁵ Tr. Vol. 2, p. 438, ll. 15-20; p. 504, ll. 13-16.

⁶ Tr. Vol. 2, p. 510-511, ll. 21-10.

⁷ Staff's Initial Post-Hearing Brief, p. 7.

a rejection of the Company Agreement with so little time remaining before the end of Cycle 1 will likely result in a lapse in utility-sponsored energy efficiency programs in Ameren Missouri's service territory, leading to negative consequences, as stated in DE's Initial Brief.

Staff further criticizes the Company Agreement for including combined heat and power ("CHP") as one potential measure under the Company's Business Custom Program. Specifically, Staff states that the Company Agreement gives no consideration to whether the consumption of electricity on the customer's side of the electric meter is reduced or modified and fails to comply with the MEEIA statute and Commission rules because the Company Agreement considers more than just the difference between the electrical consumption before and after the installation of a CHP system.⁸ However, Sections 393.1075.2(4) RSMo., 4 CSR 240-3.163(1)(N), 4 CSR 240-3.164(1)(K), 4 CSR 240-20.093(1)(U), and 4 CSR 240-20.094(1)(Q) all define energy efficiency as, "... measures that reduce the amount of electricity required to achieve a given end-use."⁹ CHP systems offer energy efficiency savings; they can achieve efficiencies of 60 to 80 percent, compared to only 45 percent efficiency from separate heat and power production.¹⁰ In addition to these energy efficiency gains, CHP also fits into MEEIA under the broader definitions of "demand-side program" in Sections 393.1075.2(3) RSMo., 4 CSR 240-3.163(1)(E), 4 CSR 240-3.164(1)(F), 4 CSR 240-20.093(1)(L), and 4 CSR 240-20.094(1)(I). These definitions generally provide that a demand-side program is, " ... *any program* conducted by the utility to *modify the net consumption of*

⁸ Staff's Initial Post-Hearing Brief, p. 16.

⁹ Ex. 200 DE witness Schroeder rebuttal, p. 7, ll. 6-8.

¹⁰ Id. at ll. 8-10.

*electricity on the retail customer's side of the [electric]*¹¹ meter including, but *not limited to*, energy efficiency measures, load management, demand response, and interruptible or curtailable load.”¹² The broadly enabling words “any program” and “including, but not limited to” provide sufficient flexibility to include CHP.¹³ Additionally, any applicable program must only “modify the net consumption of electricity on the retail customer's side of the electric meter,” but the language above does not mandate a decrease in electricity consumption.¹⁴ CHP, like load management and interruptible or curtailable load programs, also allows for peak shaving and load shifting to off-peak periods, reducing the need for additional generation and transmission infrastructure to meet peaking requirements.¹⁵ Contrary to Staff's assertions, the MEEIA statute and rules do not require CHP to result in a net reduction of electricity; CHP, which is just one measure under the Business Custom Program, would thus “modify the net consumption of electricity on the retail customer's side of the electric meter.” That being the case, CHP does provide significant energy efficiency savings compared to separate heat and power units. The Company Agreement captures these energy efficiency savings by setting forth a straightforward fuel savings calculation as part of the total resource cost test to determine cost-effectiveness on a case-by-case basis.¹⁶ This calculation will account for all of the changes in net consumption of electricity on the retail customer's side of the electric meter in conformance with the MEEIA statute and rules.

¹¹ Only in Section 393.1075.2(3) RSMo.

¹² Id. at p. 8, ll. 1-4.

¹³ Id. at ll. 4-6.

¹⁴ Id. at ll. 6-9.

¹⁵ Id. at ll. 9-11.

¹⁶ Non-Unanimous Stipulation And Agreement, p. 8, filed on June 30, 2015.

Staff also criticizes the inclusion of CHP by stating that Ameren Missouri found CHP to be not cost-effective.¹⁷ However, Ameren's 2014 Demand-Side Management Market Potential Study included, "... in-depth case studies of DG-CHP¹⁸ applications for two Ameren customers: a major corn milling facility and a major manufacturing facility." In both cases, the analysis found CHP to be cost-effective.¹⁹ Additionally, Ameren Missouri's witnesses Mr. Voytas and Mr. Laurent both testified that CHP was found to be marginally cost effective in Ameren Missouri's potential study and that CHP will be evaluated for cost effectiveness on a case-by-case basis as part of the Business Custom Program.²⁰ These systems are likely to become more cost-effective as the result of ongoing discussions with the Company following Ameren Missouri's recent rate case where it agreed to review its current standby service tariff in two or more workshops with interested stakeholders and file a new standby service tariff no later than December 31, 2015.²¹

Staff additionally claims that unless Ameren Missouri's energy efficiency programs result in demand reductions such that construction of a power plant would be cancelled or materially postponed, the Company's shareholders will not have experienced a foregone supply-side earnings opportunity; therefore, according to Staff, the Company should not receive a performance incentive unless demand reductions occur which result in the avoidance of any actual power plant construction.²² However, Staff's conclusion is based off an unreasonable interpretation of MEEIA's statutory

¹⁷ Staff's Initial Post-Hearing Brief, p. 16.

¹⁸ DG-CHP stands for distributed generation-combined heat and power.

¹⁹ Ex. 200 DE witness Schroeder rebuttal, p. 8, ll. 18-21.

²⁰ Tr. Vol. 1, pp. 247-248, ll. 20-7; Tr. Vol. 2, p 315, ll. 1-19.

²¹ Non- Unanimous Stipulation And Agreement Regarding Supplemental Service Issues, p. 1-2, filed on March 5, 2015.

²² Staff's Initial Post-Hearing Brief, p. 41.

provision to, "... value demand-side investments equal to traditional investments in supply and delivery infrastructure ...,"²³ since the same provision goes on to specifically state that in order to achieve this policy the Commission shall, among other enabling mechanisms, "... [p]rovide timely **earnings opportunities associated with** cost-effective measurable and verifiable **efficiency savings**" (emphasis added).²⁴ Under the Non-Company Agreement's main performance incentive mechanism, Ameren Missouri's earnings opportunity would primarily be associated with demand savings, which are incidental to a portfolio of energy efficiency programs that are not primarily designed to achieve demand-related savings. The Non-Company Agreement's performance incentive is also based on the assumption that, absent MEEIA programs, Ameren Missouri's Meramec power plant would retire in 2027 rather than 2022.²⁵ This assumption is unreasonable because energy efficiency is not always the primary contributor to the accelerated retirement of power plants; Ameren Missouri witness Mr. Davis indicated that the retirement of Meramec was a, "... function of the plant's operating costs and the need for on-going capital investment plus the impact of current or future regulations on those costs."²⁶ Based on Ameren Missouri's 2011 Integrated Resource Plan ("IRP"), environmental regulations are the deciding factor in retiring the Meramec power plant in 2022, not energy efficiency.²⁷

The Non-Company Agreement's main performance incentive mechanism also specifically incents the Company to produce peak demand reductions rather than to

²³ Section 393.1075.3, RSMo.

²⁴ Section 393.1075.3(3) RSMo.

²⁵ Exhibit 107, Ameren witness Davis Rebuttal Testimony to Non-Utility Stipulation, p. 17, ll. 2-12.

²⁶ Id. at p. 15, ll. 3-6.

²⁷ Id. at p. 16, ll. 4-6.

achieve cost-effective energy efficiency savings.²⁸ Basing the main performance incentive on peak demand reductions would necessitate a substantial redesign of the Company's MEEIA portfolio, which has not been presented through the Non-Company Agreement.²⁹ This redesign would include the reduction or elimination of all residential energy efficiency programs with the exception of the residential heating, ventilation, and air conditioning ("HVAC") program.³⁰ The demand-related performance incentive in the Non-Company Agreement would therefore greatly reduce residential customers' opportunities to directly benefit from utility-sponsored energy efficiency programs. The Non-Company Agreement's proposal to base the main performance incentive on system peak demand reductions would also result in comparably higher greenhouse gas emissions than if the Company was incented to pursue energy efficiency savings as its primary metric, since emissions are directly associated with energy as opposed to demand; this would hinder the state of Missouri's ability to use low-cost energy efficiency to comply with the Environmental Protection Agency's Clean Power Plan ("111(d) rule").³¹ In addition, the reduction in peak demand under a demand-related performance incentive mechanism could also directly affect the state's compliance under the 111(d) rule, since during times of system peak demand natural gas is usually the generation source used to produce the last unit of energy; natural gas-fired generation also results in slightly less than 50% of the greenhouse gas emissions of coal-fired generation.³² Therefore, under the main performance incentive mechanism that Staff advocates, the Company would focus on the energy efficiency opportunities

²⁸ Exhibit 113, Ameren witness Voytas Rebuttal Testimony, p. 3, ll. 14-17.

²⁹ Id. at pp. 3-4, ll. 22-2.

³⁰ Id. at p. 4, ll. 11-13.

³¹ Id. at p. 11, ll. 18-24.

³² Id. at p. 12, ll. 6-11.

that had the largest peak demand reduction potential, which would displace natural gas-fired generation – as opposed to coal-fired generation – and ultimately result in the avoidance of fewer greenhouse gas emissions than if energy efficiency was the primary focus.³³

Finally, Staff criticizes DE’s witness Mr. Hyman for expressing his reservations about the energy savings targets in the Company Agreement;³⁴ however, Staff fails to acknowledge Mr. Hyman’s other statements at hearing or in testimony that the Company Agreement represents a higher savings target than the originally filed Plan.³⁵ While DE believes that additional energy savings potential remains, the Plan as modified by the Company Agreement demonstrates progress towards the MEEIA statute’s goal of achieving all cost-effective demand-side savings by increasing the energy savings target 37% above Ameren Missouri’s initially filed target; moreover, the Company Agreement’s energy efficiency savings target is approximately 22% higher than the Non-Company Agreement. The Company Agreement also provides for a collaborative process which will allow stakeholders to work to identify potential new programs, increase participation rates, and determine other alternatives to achieve deeper savings.³⁶ The Non-Company Agreement contemplates a second “expert panel” process in addition to such a collaborative; however, this expert panel process is unlikely to lead to additional savings in part because of the timing of the expert panel in relation to its recommendation of 2017 and 2018 program year savings³⁷ and the lack of

³³ Id. at ll. 12-15.

³⁴ Staff’s Initial Post-hearing Brief, pp. 45-46.

³⁵ Tr. Vol. 2, p. 558, ll. 3-9; Exhibit 202, DE witness Hyman Supplemental Rebuttal, p. 6, ll. 16-20.

³⁶ Non-Unanimous Stipulation And Agreement, pp. 9-10.

³⁷ Exhibit 202, DE witness Hyman Supplemental Rebuttal, p. 5, ll. 3-16.

input by stakeholders other than Staff throughout the panel process.³⁸ Therefore, the Company Agreement demonstrates more progress toward MEEIA's goal of achieving all cost-effective demand-side savings than the Non-Company Agreement, the originally filed Plan, and the alternative of having no MEEIA in place in the Company's service territory.

In its initial brief, OPC states that DE is indifferent as to whether evaluation, measurement, and verification ("EM&V") should be conducted of Ameren Missouri's energy efficiency programs.³⁹ However, DE's position statement filed in this case indicates that, "DE recommends the Commission approve the demand-side programs investment mechanism as described in the Company Agreement." Specifically, the Company Agreement, including Appendix B, outlines the process for and scope of EM&V. While DE did not file testimony on the issue of EM&V in this case, DE has taken a position on whether EM&V should be conducted as it relates to Ameren Missouri's MEEIA Cycle 2 application; additionally, Mr. Hyman explained DE's understanding of the process and scope of EM&V in the Company Agreement at hearing, stating that the Company Agreement provides for annual EM&V and that the results of EM&V will be used to determine Ameren Missouri's performance incentive.⁴⁰ Mr. Hyman went on to state that the EM&V process in the Company Agreement provides a level of certainty to Ameren Missouri, but also provides a meaningful role for the independent evaluator and the Commission's auditor.⁴¹ Contrary to OPC's statement, DE has knowledge of EM&V and is not indifferent to the issue.

³⁸ Id. at pp. 5-6, ll. 18-2.

³⁹ OPC's Initial Post-Hearing Brief, p. 24.

⁴⁰ Tr. Vol. 2, p. 555, ll. 5-7.

⁴¹ Id. at pp. 555 & 557, ll. 11-15 & 13-20

Under the Company Agreement, Ameren Missouri has the potential to earn up to 30 million dollars in performance incentive if the final EM&V results, as determined by the independent evaluator, find that the Company has reached or surpassed its energy savings targets.⁴² This level of EM&V is consistent with the statutory requirement to, “[p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.”⁴³ The plain meaning of this language is that only “earning opportunities,” i.e., a performance incentive must be associated with measurable and verifiable efficiency savings, i.e., those subject to EM&V. While it is statutorily required that any opportunity the electric company has to earn a performance incentive be backed up by measured and verified efficiency savings, there is no similar requirement that lost revenues associated with utility sponsored energy efficiency programs, i.e., the throughput disincentive, be associated with measurable and verifiable efficiency savings. In other words, there is no statutory prohibition on deeming energy efficiency savings of a particular measure for the purposes of determining the throughput disincentive that the electric company will need to collect from its customers to, “... ensure that utility financial incentives are aligned with helping customers use energy more efficiently”⁴⁴ Requiring retrospective EM&V for the determination of the throughput disincentive to which Ameren Missouri is entitled is not required by the MEEIA statute and, as stated by Ameren Missouri’s witness Ms. Barnes, would misalign the Company’s financial incentives to help its customers use energy more efficiently.⁴⁵

⁴² Non-Unanimous Stipulation And Agreement, pp. 13-14.

⁴³ Section 393.1075.3(3)RSMo.

⁴⁴ Section 393.1075.3(2)RSMo.

⁴⁵ Tr. Vol. 2, p. 532. ll. 9-19.

WHEREFORE, DE respectfully files its *Reply Brief* and recommends that the Commission approve Ameren Missouri's MEEIA Cycle 2 Plan as modified by the Company Agreement filed on June 30, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been emailed to the certified service list this 26th day of August, 2015.

/s/ Alexander Antal