

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 29th day of February, 2012.

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's Filing to Implement Regulatory) **File No. EO-2012-0142**
Changes in Furtherance of Energy Efficiency)
as Allowed by MEEIA)

**ORDER DENYING STAFF'S MOTION FOR VARIANCE
DETERMINATIONS AND ESTABLISHING PROCEDURAL SCHEDULE**

Issue Date: February 29, 2012

Effective Date: February 29, 2012

On January 20, 2012, Union Electric Company d/b/a Ameren Missouri applied to the Commission for approval of the company's Technical Resource Manual (TRM) and a Demand-Side Investment Mechanism (DSIM) as contemplated by the Missouri Energy Efficiency Investment Act (MEEIA) and the Commission's implementing regulations. The parties have been discussing these matters among themselves, but the Commission has not yet established a procedural schedule.

The parties filed competing proposed procedural schedules on February 17. On the same day, Staff filed a motion asking the Commission to make a determination regarding the variances Ameren Missouri has requested from the applicable Commission rules before proceeding to consider the rest of the company's application. The Commission will take up Staff's motion and the competing procedural schedules in this order.

The controlling regulation, 4 CSR 240-20.094(3), requires the Commission to:

approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing.

The procedural schedule proposed by Ameren Missouri would require the parties to pre-file rebuttal and surrebuttal testimony, leading up to an evidentiary hearing on April 10 and 11, 2012. That procedural schedule would contemplate the Commission issuing a decision to be effective by May 19, 2012, which is 120 days after Ameren Missouri filed its application.

The competing procedural schedule proposed by Staff, the Office of the Public Counsel, Sierra Club, Earth Island Institute d/b/a Renew Missouri, the Natural Resources Defense Council, and the Missouri Department of Natural Resources contains two alternative procedural schedules. Their proposed Plan B would require the parties to pre-file two rounds of testimony leading up to an evidentiary hearing on May 24 and 25. It contemplates the Commission issuing a decision to be effective by July 18, 2012, which is 180 days after Ameren Missouri filed its application.

The procedural schedule proposed by those parties as Plan A¹ is tied to Staff's motion asking the Commission to rule on the variances requested by Ameren Missouri before starting a procedural schedule that would lead toward a hearing and decision on Ameren Missouri's full application. Plan A proposes that the Commission issue its decision on Ameren Missouri's application 180 days after the Commission rules on the variances requested by Ameren Missouri.

¹ The Department of Natural Resources prefers Plan B as it does not join in the proposal that the Commission rule on Ameren Missouri's request for variances before starting the procedural schedule countdown.

Before deciding on an appropriate procedural schedule, the Commission must decide whether to grant Staff's motion for an early determination regarding the variances requested by Ameren Missouri. Staff's motion expresses concern that Ameren Missouri's application proposes a demand-side programs investment mechanism that is substantially at odds with the controlling Commission rule. According to Staff, the variances requested by Ameren Missouri, as well as additional variances that Ameren Missouri has not requested but Staff believes it needs, would essentially reverse the rule by allowing the company to recover "net shared benefits" prospectively, rather than retrospectively in the manner contemplated by the rule.

The Commission directed that any party wishing to respond to Staff's motion do so by February 24. Ameren Missouri filed its response on that date. Ameren Missouri contends the Commission's rule clearly provides that the Commission is to act on an electric utility's MEEIA filing within 120 days. It also points out that there is nothing in the rule to require the Commission to separately consider requests for variance before considering the entire application. Indeed, since the requests for variance are an integral part of the overall application, considering the variances separately from the overall application would simply require the Commission to consider the merits of the application twice. Furthermore, separate consideration of the requests for variance would delay the possible implementation of the energy efficiency policies proposed in the application.

Once again, Ameren Missouri indicated its willingness to extend the 120-day period for consideration of its application by up to 60 days. However, it explains that

any delay in approval of the application will result in a corresponding delay in the implementation of energy efficiency programs.

Ameren Missouri was not the only party to file a response on February 24. Staff filed a response to Ameren Missouri's proposed procedural schedule and Public Counsel filed a response supporting Staff's motion for variance determinations. KCP&L and KCPL-GMO, as well as the Department of Natural Resources filed responses opposing Staff's motion for variance determinations. Although they had previously supported the procedural schedule proposed by Staff that asked the Commission to decide the variance requests before addressing the full application, Sierra Club, Renew Missouri, and the Natural Resource Defense Council now agree that there is no rule or statute that would require the Commission to pre-decide the variance questions. They continue to request that the Commission allow an extra sixty days to consider the full application.

The Commission agrees with Ameren Missouri that there is no requirement in regulation or statute that would require resolution of the requests for variance before considering Ameren Missouri's full MEEIA application. Indeed, since the requests for variance from the Commission's rule are an integral part of the company's proposal, it would be difficult to rule on the requests for variance without considering the merits of the full proposal. To do so would just delay the process.

Although the Commission does not accept Staff's proposal to rule on Ameren Missouri's proposed variances apart from its consideration of the company's entire application, it is mindful that this is a complicated case that cannot reasonably be resolved in 120 days. The procedural schedule proposed by the parties led by Staff as

Plan B would allow the matter to be resolved in 180 days. Ameren Missouri has indicated its willingness to allow for an extra 60 days if the Commission found the extra time to be necessary. Although the rule requires the Commission to act within 120 days, another provision of the rule, 4 CSR 240-20.093(13), allows the Commission to grant a variance from any provision of the rule for good cause shown. The Commission finds good cause to allow an extra 60 days to consider Ameren Missouri's application and will establish a procedural schedule based on Plan B proposed by the parties led by Staff.

The parties led by Staff also agreed upon several procedural measures to aid preparations for the hearing. The Commission will adopt those procedural measures, with the modification to the time allowed for response to data requests proposed by Ameren Missouri.

THE COMMISSION ORDERS THAT:

1. Staff's Motion for Variance Determinations is denied.
2. The following procedural schedule is established:

Rebuttal Testimony	-	April 13, 2012
Surrebuttal Testimony	-	May 4, 2012
List of Issues, Order of Witnesses, Order of Cross-Examination, Order of Opening	-	May 10, 2012
Statements of Position	-	May 15, 2012
Hearing	-	May 24 and 25, 2012, beginning each day at 8:30 a.m.

- Initial Briefs** - **June 6, 2012**
- Reply Briefs** - **June 20, 2012**
- Decision** - **July 18, 2012**

3. The parties shall comply with the following procedural requirements:
 - (A) Testimony shall be prefiled as defined in Commission Rule 4 CSR 240-2.130. All parties must comply with this rule, including the requirement that testimony be filed on line-numbered pages.
 - (B) The parties shall agree upon and Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will be called, and the order of cross-examination for each witness. The list of issues should be detailed enough to inform the Commission of each issue that must be resolved. The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.
 - (C) Each party shall file a simple and concise statement summarizing its position on each disputed issue.
 - (D) All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 4 CSR 240-2.080. Briefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.
 - (E) All parties shall bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has not been

prefiled, the party offering it must bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Presiding Judge, and all counsel.

- (F) All parties shall provide copies of testimony (including schedules), exhibits, and pleadings to other counsel by electronic means and in electronic form, essentially contemporaneously with the filing of such testimony, exhibits, or pleadings where the information is available in electronic format (.PDF, .DOC, .WPD, or .XLS). Parties are not required to put information that does not exist in electronic format into electronic format for purposes of exchanging it.
- (G) The parties shall make an effort to not include highly confidential or proprietary information in data request questions. If highly confidential or proprietary information must be included in data request questions, the highly confidential or proprietary information shall be appropriately designated as such pursuant to Commission Rule 4 CSR 240-2.135.
- (H) Each party serving a data request on another party shall provide an electronic copy of the text of the “description” of that data request to counsel for all other parties contemporaneously with service of the data request. Regarding Staff-issued data requests, if the description contains highly confidential or proprietary information, or is voluminous, a hyperlink to the EFIS record of that data request shall be considered a sufficient copy. If a party desires the response to a data request that has been served on another party, the party desiring a copy of the response shall

request a copy of the response from the party answering the data request. Data requests, objections to data requests, and notifications respecting the need for additional time to respond to data requests shall be sent by e-mail to counsel for the other parties. Counsel may designate other personnel to be added to the service list for data requests, but shall assume responsibility for compliance with any restrictions on confidentiality. If responding to a Staff data request, the responding party shall record the response in EFIS and send an email notification to Staff Counsel that such party has filed the response. For all other parties, data request responses shall be served on counsel for the requesting party, unless waived by counsel, and on the requesting party's employee or representative who submitted the data request, and shall be served electronically, if feasible and not voluminous as defined by Commission rule.

- (I) The response time for all data requests shall be ten calendar days to provide the requested information, with five business days to object or notify the requesting party that more than ten calendar days will be needed to provide the requested information. If a data request has been responded to, a party's request for a copy of the response shall be timely responded to, considering that the underlying data request has already been responded to.
- (J) Workpapers prepared in the course of developing a witness' testimony shall not be filed with the Commission, but shall be submitted to each

party within two business days after the particular testimony is filed. Workpapers need not be submitted to a party that has indicated it does not want to receive some or all of the workpapers. Workpapers containing highly confidential or proprietary information shall be appropriately marked. If there are no workpapers associated with testimony, the party's attorney shall so notify the other parties within the time allowed for providing those workpapers.

- (K) Where workpapers or data request responses include models or spreadsheets or similar information originally in a commonly available format where inputs or parameters may be changed to observe changes in inputs, if available in that original format, the party providing the workpaper or response shall provide this type of information in that original format with formulas intact.
- (L) Documents filed in EFIS are properly served if provided to counsel of record for all other parties via e-mail.

4. The hearing shall be held at the Commission's office at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

5. This order shall become effective immediately upon issuance.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Gunn, Chm., Jarrett and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge