

4. On December 30, 2014, Public Counsel filed its *Motion to File Out of Time, Request for Additional Time to Respond to Staff's Recommendation, and Motion to Suspend Tariff Sheets*.

5. On that same day, and without ruling on Public Counsel's motions, the Commission issued its *Order Directing Filing*, ordering Public Counsel to state, no later than January 5, 2015, what authority the Commission has to suspend the tariffs and specifying how long Public Counsel wishes the tariffs to be suspended. The Commission further ordered Staff to respond to the motions no later than January 9, 2015.

6. On January 5, 2015, Public Counsel submitted its response in compliance with the Commission's December 30 order.

7. Staff now submits its response in compliance with the Commission's December 30 order and addresses what appear to be the main points raised by Public Counsel as set out below.

ANALYSIS

8. It is important to note that this case is not a prudence review, but the annual adjustment to MEEIA² expenditures required under Ameren Missouri's EEIC Rider.³ The prudence of Ameren Missouri's MEEIA programs' cost, Company TD-NSB Share, and interest for the period January 2, 2013 through June 30, 2014 is currently before the Commission in Case No. EO-2015-0029.⁴

² Missouri Energy Efficiency Investment Act, Mo. Rev. Stat. §393.1075 (Supp. 2013).

³ MO.P.S.C. SCHEDULE NO. 6, 1ST Revised Sheets NO. 90 through 90.4.

⁴ A performance incentive award for Ameren Missouri's 2013-2015 Energy Efficiency Plan is not the subject of the prudence review in that case, because such an amount – if any – will not be determined until 2016.

Staff's Response to Request for Additional Time to Respond to Staff's Recommendation

9. In support of its request for additional time to respond to Staff's Recommendation, Public Counsel states that good causes exists to grant the request because Staff's Recommendation raised new questions for Public Counsel.⁵ In particular, Public Counsel asserts that Staff's Recommendation did not specify whether adjustments to the DSIM rates and cost recovery revenue requirement are in accordance with the provision of Commission Rule 4 CSR 240-20.093, RSMo § 393.1075, or the DSIM established, modified, or continued in the most recent filing for demand-side program approval.⁶

Contrary to Public Counsel's assertion, Staff did state that the proposed tariff sheet is in compliance with Ameren Missouri's MEEIA Stipulation and Agreement that was approved by the Commission in EO-2012-0142 and that the proposed tariff sheet is designed to recover the amounts previously approved by the Commission.⁷ This Stipulation and Agreement was issued in compliance with the provisions listed by Public Counsel.

10. In further support of its request for additional time, Public Counsel states that it issued data requests to Ameren Missouri on December 23, 2014, and that, according to Commission rule, Ameren Missouri's responses to those data requests are not due until January 12, 2015.⁸ The controlling rule in this case, 4 CSR 240-20.093, contains a specific timeline for the request of information. The parties have ten (10) days from the time of a utility's filing to request any additional information they believe is

⁵ Public Counsel's Response to Order, P. 4, ¶ 12.

⁶ Public Counsel's Response to Order, P.3, ¶ 9.

⁷ Staff Recommendation to Approve Tariff Sheet, ¶ 6.

⁸ Public Counsel's Response to Order, P.4, ¶ 13.

required to resolve any deficiencies in that filing. If a utility is noncompliant in providing all required information, the rule sets forth specific provisions to compel production of the information.

Public Counsel has had as much time as Staff to review and request any necessary information. If Public Counsel believed that it lacked information necessary for a thorough review of the application, regardless of when Staff's Recommendation was filed or whether Public Counsel had a chance to review it, Public Counsel should have requested that information within the ten (10)-day window set out by the rule. Of course Public Counsel has every right to issue data requests, but the Commission's process should not be held up by a belated filing and a request for information that by rule should have been made at the outset of this filing.

Staff's Response to Motion to Suspend Tariff Sheet

11. Public Counsel bases its Motion to suspend Ameren Missouri's proposed tariff sheet, in part, on RSMo § 393.150, which allows the Commission to suspend proposed tariff sheets in rate-making proceedings for up to one hundred twenty (120) days plus six (6) months.⁹

RSMo § 393.150 generally applies to traditional rate-making proceedings. Additionally, the Commission has promulgated its own rules¹⁰ specifically for the governance of Demand-Side Investment Mechanism Programs – 4 CSR 240-20.093, which was also cited by Public Counsel. That rule explicitly states what authority the Commission has with respect to proposed DSIM adjustments. As such, and unless the

⁹ Mo. Rev. Stat. § 393.150 (Supp. 2013).

¹⁰ Mo. Rev. Stat. § 393.1075.11 (Supp. 2013) gives the Commission authority to adopt its own rules and procedures to ensure that electric corporations can achieve the goals of the Missouri Energy Efficiency Investment Act.

Commission intended its own rules to be superfluous, this issue should be decided under 4 CSR 240-20.093, as opposed to RSMo § 393.150.

12. Contrary to Public Counsel's assertion, nowhere does 4 CSR 240-20.093 specifically enable the Commission to suspend or extend the sixty (60)-day timeline for tariff approval except under one limited circumstance that does not exist here, unless a request for a variance is granted on good cause.¹¹ Specifically, 4 CSR 240-20.093(4)(D) allows the Commission to suspend the processing timeline for the adjustment to increase DSIM rates in the limited event that a utility fails to provide information after being notified by any party of a deficiency within ten (10) days of its filing, forcing that party to request that the Commission compel the production of the information. Public Counsel has made no assertion that this is the circumstance faced here. Public Counsel did issue data requests to Ameren Missouri within ten (10) days of the Company's filing, as allowed by the rule, but has made no assertion that Ameren Missouri failed to produce that data. As such, that particular provision of the rule, which is the only provision that allows the Commission to extend the processing timeline without a variance, does not apply.

13. Apart from the provisions of 4 CSR 240-20.093(4)(D), and unless the Commission grants a request for a variance from the rules, the Commission only has two options under 4 CSR 240-20.093(4) – the Commission may either approve or reject the proposed tariff sheets within sixty (60) days. Moreover, this rule has the full force and

¹¹ The Commission is given authority to grant a request for variance from the rules with a showing of good cause by 4 CSR 240-20.093(13).

effect of the law and is binding on the Commission.¹² In the instant case, Ameren Missouri filed its proposed tariff sheet on November 21, 2014, so the Commission has sixty (60) days from that date to either approve or reject the tariff sheet.

14. Public Counsel has made no explicit request for a variance from the DSIM rules in its Motion to suspend the tariff sheet under 4 CSR 240-20.093(13). Additionally, in the section of its pleading pertaining to its Motion, Public Counsel never specifically states good cause for a variance or its Motion apart from its desire for “abundance of caution, and to allow for a full review of the outstanding data request responses and any potential hearing that may be needed...”¹³ The Commission has previously stated that, to constitute good cause, not just any cause or excuse will do; rather, the reason must be real, substantial, and reasonable.¹⁴

To begin with, the obscure request for an “abundance of caution” does not constitute a real or substantial justification for good cause. Furthermore, as outlined above, 4 CSR 240-20.093(4) sets out a specific timeline for DSIM adjustments and there are very important policy reasons behind it. DSIM programs are essential to energy management and thus it is important to encourage utilities to participate in such programs by allowing for quick and efficient cost recovery mechanisms. To allow Public Counsel to delay the process would entirely undermine the important public policy reasons behind the rule, especially when the reason behind such delay is to obtain and review information that could have and should have been obtained at the outset of this proceeding.

¹² The rules of a state agency duly promulgated pursuant to properly delegated authority have the force and effect of law and are binding upon the agency adopting them. *State ex rel. Martin-Erb v. Missouri Com'n on Human Rights*, 77 S.W.3d 600, 607 (Mo. banc 2002).

¹³ Public Counsel's Response to Order, PP. 5-6, ¶ 19.

¹⁴ EO-2012-0009, *Order Denying Staff's Motion for Variance Determinations*, February 29, 2012.

WHEREFORE, because it is Staff's Recommendation that Ameren Missouri's proposed tariff sheet was issued in compliance with all relevant Commission rules and orders and state statutes, Public Counsel has failed to state good cause for its request for additional time and its Motion to suspend the proposed tariff sheet, and because of the important public policies at issue here, Staff respectfully requests that Public Counsel's request for additional time to respond to Staff's Recommendation and the Motion to suspend the proposed tariff sheet be denied.

Respectfully submitted,

/s/ Whitney Hampton

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was mailed, electronically mailed, or hand-delivered to all counsel of record on this 9th day of January, 2015.

/s/ Whitney Hampton