

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

PUBLIC COUNSEL’S SECOND STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel (“Public Counsel”) and submits its statement of positions:

LIST OF ISSUES

Issue 1: Should the Commission approve, reject or modify Ameren Missouri’s MEEIA Cycle 2 Plan (hereafter the “Plan”)?

OPC Position:

The Commission should modify Ameren Missouri’s MEEIA Cycle 2 plan consistent with the terms of the *Amended Non-Unanimous Stipulation Regarding Ameren Missouri’s MEEIA Cycle 2* (“Amended Non-utility Stipulation”).

Ameren Missouri’s proposed plan as filed (and as modified by the utility Stipulation filed on June 30, 2015) generously addresses the utility’s financial incentives, but fails to sustain or enhance customers’ incentives to use energy more efficiently. Of particular concern to Public Counsel, among the plan’s many deficiencies, is the design of the cost recovery mechanism that would virtually ensure that the Company continues to over-recover from ratepayers. Without a more appropriately designed cost recovery mechanism, ratepayers will continue to remit excessive amounts to Ameren Missouri.

Instead, the Commission should modify Ameren Missouri’s unlawful proposal consistent with the Amended Non-utility Stipulation. Adopting the terms of the Amended Non-utility Stipulation would authorize the company to recover program costs, the Net Throughput

Disincentive (“NTD”), and the Performance Incentive (“PI”) mechanisms that form the alternative DSIM, as described below, in order to remove disincentives to Ameren Missouri’s promotion of DSM programs and to properly incent Ameren Missouri in the promotion of DSM programs.

In addition to establishing the alternative DSIM recovery mechanism, the Commission should order Ameren Missouri to file tariffs to initiate a set of programs under Cycle 2 for Multi-Family Low Income programs and a Small Business Direct program, to perform the analyses required to determine the appropriateness of other programs, and to file to expand its portfolio based on that analysis, including hiring a third-party mediator to convene an expert panel to identify additional cost-effective savings strategies and additional cost-effective programs. In total, the terms of the Amended Non-utility Stipulation, demonstrate progress toward achieving all cost effective demand side savings for this MEEIA Cycle 2.

The Commission should reject Ameren Missouri’s application and instead modify Ameren Missouri’s MEEIA Cycle 2 plan, as described above, in order to remove disincentives to Ameren Missouri’s promotion of DSM programs and to properly incent Ameren Missouri in the promotion of DSM programs.

Issue 2: Do the programs in the Plan, and associated incremental energy and demand savings, demonstrate progress toward achieving all cost-effective demand-side savings consistent with state policy (as established by MEEIA)?

OPC Position:

No, Ameren Missouri’s proposed plan does not include all cost-effective demand side programs. The Company’s proposal further departs from state policy of achieving all cost-effective demand-side savings by understating the potential energy and demand savings associated with the programs included in the proposed plan. The plan relies on a flawed potential

study that is further distorted by a downward adjustment to potential energy savings based on the results of secondary data. As proposed, Ameren Missouri's plan is a reduction from the energy savings targets in the Company's MEEIA Cycle 1 and fails to demonstrate progress toward achieving all cost-effective demand-side savings.

However, the terms of the Amended Non-utility Stipulation modify Ameren's proposal in order demonstrate progress toward achieving all cost-effective demand-side savings.

In addition to the programs included in Ameren's initial application filed in December 2014, the Company can achieve additional savings by offering Multi-Family Low-Income programs and a Small Business Direct program as described in the Amended Non-utility Stipulation. To encourage the company to pursue programs that have broad customer impact, 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 MFLI units and/or Ameren Missouri's MFLI direct install program.

Beyond information that the company has available to it now, additional cost-effective savings and strategies may be available. The Amended Non-utility Stipulation provides a blueprint for the company to work collaboratively with stakeholders and a panel of experts convened by a third-party mediator to identify and recommend additional programs and possible increases in projected kWh savings for 2017 and 2018. Importantly, the additional kWh savings identified would not increase the company's performance target for its demand-related performance incentive. To reward the company for its meaningful participation in identifying and implementing programs that increase kWh savings, the Amended Non-Utility Stipulation provides that the Commission may approve an additional performance incentive based on

changed program kWh targets at the following amounts: \$2 million at 105%, \$3 million at 130%, and \$5 million at 150%.

In total, the terms of the Amended Non-utility Stipulation demonstrate progress toward achieving all cost effective demand side savings for this MEEIA Cycle 2.

Issue 3: If the Commission approves a Plan, what are the components of the demand-side programs investment mechanism and how will each of the components be administered?

OPC Position:

The Commission should approve a MEEIA plan consistent with the terms of the Amended Non utility Stipulation to ensure that ratepayers and the utility will share the financial benefits resulting from the energy efficiency programs. Of the two competing stipulations presented to the Commission in this case, only the non-utility stipulation properly balances the interests of ratepayers and the company.

The alternative demand-side recovery mechanism as described in the Amended Non-utility Stipulation includes program cost recovery, a net throughput disincentive, and performance incentive mechanisms in order to remove disincentives to Ameren Missouri's promotion of DSM programs and to properly incent Ameren Missouri in the promotion of DSM programs.

Program Costs

The company should receive program cost recovery roughly contemporaneous with incurrence of costs.

Throughput Disincentive Mechanism

The Net Throughput Disincentive Mechanism should make the utility indifferent as to any reduction in sales of energy because of program measures installed under MEEIA. As such,

through the throughput mechanism Ameren Missouri should recover only the value of the unrealized revenue caused by its MEEIA programs. In order to accomplish this outcome, the terms of the Amended Non-utility Stipulation would allow Ameren Missouri to bill 66.67% of the product of the accumulated projected measure savings and the applicable unbilled per kWh rate amounts. Upon conclusion of each program year, “realized kWh savings” will be determined through evaluation, measurement, and verification. After the determination of realized kWh savings attributable to Ameren Missouri, the company will potentially recover additional revenues, up to 133.33% of the projected savings.

Performance Incentive

Rather than adopting the company’s proposal for a single performance incentive that rewards the company for achieving only 70% of an already low target, the Commission should adopt the alternative performance incentives that gives Ameren Missouri an opportunity to earn significant rewards for achieving meaningful targets as outlined in the Amended Non-utility Stipulation.

The first component of the performance incentive is the demand-related incentive that would be based on the kW savings associated with the installation of measures that impact future capacity requirements. This incentive contains two tiers. If the company achieves 121,100 kW savings, Ameren will receive an incentive equal to coincident peak kW savings multiplied by \$48/kW.¹ For achievement of kW savings that exceed 834,000 kW, Ameren will receive a second-tier demand incentive of \$250/kW, not to exceed an additional 166,000 kW. The demand

¹ On July 14, 2015, Staff filed supplemental direct testimony of Sarah Kliethermes, wherein Ms. Kliethermes corrected the demand-related Performance Incentive value for Tier 1, changing the value from \$37/kW to \$48/kW. This change provides an increase to the performance incentive payout and benefits Ameren Missouri. Because the change merely reflects correcting an input into the agreed-to methodology, Public Counsel supports this correction.

incentives described would give Ameren Missouri the opportunity to earn approximately \$81.5 million.²

Second, the Amended Non-utility Stipulation provides for a customer-participation performance incentive. To encourage the company to pursue programs that have broad customer impact and ensure that low-income customers can also 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. Under this incentive Ameren may earn an additional \$537,500.

Third, an energy-related incentive may be available based on the recommendations of the panel of experts convened by a third-party mediator as described in the Amended Non-utility Stipulation. 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 amounts: \$2 million at 105%, \$3 million at 130%, and \$5 million at 150%.

Experience from Ameren's MEEIA Cycle 1 has shown that the TD-NSB mechanism is severely flawed. Through two years, the company has significantly over-collected from ratepayers because the assumptions underlying the TD-NSB calculation changed. Adopting Ameren's proposed TD-NSB in this case all but assures that ratepayers will continue to remit excess dollars to the company. The TD-NSB mechanism proposed by the company requires a calculation of net benefits that relies on "deemed" values and a variety of other assumptions. The ratepayers are then forced to pay Ameren a percentage of that hypothetical net benefit amount. However, even though Ameren's TD-NSB calculation requires assumptions, including the level

² (834,000 kW x \$48/kW) + (166,000 kW x \$250/kW) = \$81,532,000.

of energy savings caused by a measure, it does not provide for adjustment if the benefits never materialize. Since the company is paid up front, all risk that benefits do not materialize, whether through factors outside of the utility's control or factors entirely under the utilities control, is placed on customers. Rather than make the utility indifferent as to any reduction in sales of energy because of program measures installed under MEEIA, the TD-NSB mechanism perversely incents Ameren to offer program measures with high deemed energy savings and low realized energy savings. The use of a TD-NSB in Cycle 1 has been a failed experiment and should not be repeated.

If, however, the Company is allowed to recover a throughput disincentive for lost revenues using a mechanism similar to the flawed TD-NSB mechanism in Cycle 1, the amount should be determined in accordance with the Commission's rules and reflect full retrospective evaluation, measurement, and verification of energy savings. The determination of net shared benefits should be calculated by applying the total resource cost test and include any utility performance incentive as a cost.

Any utility performance incentive should only be included for recovery in a demand-side program investment mechanism after full retrospective evaluation, measurement, and verification of the Company's efficiency savings. Importantly, any incorrect calculation of the net shared benefits amount should be addressed in MEEIA prudence reviews to ensure the company collects only the appropriate approved amount from ratepayers.

Issue 4: If the Commission approves a Plan, what variances from Commission rules based on a showing of good cause are necessary?

OPC Position:

The Company's proposed plan fails to comply with the Commission's applicable MEEIA rules without good cause, and so, should be rejected. Rather than design a program that fits

within the Commission's rules, Ameren Missouri's initial proposal requested variance from twenty-seven separate rules contained in 4 CSR chapters 3, 14, and 20, seeking a MEEIA plan that would likely perpetuate and increase the over-collection from ratepayers that has occurred in Ameren Missouri's MEEIA Cycle 1. Public Counsel opposes waiver of the Commission's rules for the company's proposed plan.

However, should the Commission approve a plan consistent with the terms of the Amended Non-utility Stipulation, Public Counsel will agree to necessary waivers, if any, to effectuate the terms.

Office of the Public Counsel's Issues:

Issue 1: If the Commission approves a plan, should the total resource cost test (TRC) be applied uniformly when calculating net shared benefits?

OPC Position:

If the Commission approves a plan consistent with the terms of the Amended Non-utility Stipulation, which does not rely on calculating net shared benefits, it need not address this issue.

However, should the Commission approve a plan that requires a calculation of net shared benefits such as suggested by Ameren, the total resource cost test should be used as expressed in the MEEIA statute and Commission's rules. Utilizing the TRC evaluates the costs and benefits to both participants and program administrators of energy efficiency programs. Public Counsel agrees that the TRC should be used on the front end to evaluate potential benefits. However, Public Counsel disagrees with Ameren Missouri's abandonment of the TRC when calculating the net shared benefits for purposes of determining the throughput disincentive and the utility performance incentive. Doing so mismatches how evaluations are performed and serves to inflate artificially savings and revenues. Rather than mismatch the application of cost

effectiveness tests, the Commission should require that the TRC be applied uniformly when calculating net shared benefits.

Issue 2: If the Commission approves a demand-side programs investment mechanism that includes a performance incentive, should the performance incentive be included as a cost when calculating the net shared benefits?

OPC Position:

If the Commission approves a plan consistent with the terms of the Amended Non-utility Stipulation, which does not rely on calculating net shared benefits, it need not address this issue.

However, should the Commission approve a plan that requires a calculation of net shared benefits such as suggested by Ameren, the utility performance incentive is a material cost borne by ratepayers as a result of the utility offering a MEEIA program and should be included. Best practice literature and the Commission's rules are consistent with Public Counsel's position that the proper calculation of net shared benefits includes the utility performance incentive as a cost. The consequence of omitting this cost as an input in the calculation of net shared benefits is that Ameren Missouri would recover an increased amount of money from ratepayers in its proposed demand-side cost recovery mechanism just as it has in MEEIA Cycle 1.

Sierra Club's Issue:

Issue: In assessing the cost-effectiveness of demand-side programs, should Ameren Missouri consider the results of the utility cost test (UCT)?

OPC Position:

No, the total resource cost test should be used as expressed by the MEEIA statute and Commission's rules.

Missouri Division of Energy's Issue:

Issue: If the Commission modifies Ameren Missouri's MEEIA Cycle 2 Plan what modifications should the Commission adopt?

OPC Position:

The Commission should modify Ameren Missouri's MEEIA Cycle 2 plan consistent with the terms of the Amended Non-utility Stipulation.

Of the two stipulations presented to the Commission, only the Amended Non-utility Stipulation removes disincentives to Ameren Missouri's promotion of DSM programs, properly incents Ameren Missouri in the promotion of DSM programs, and balances the financial interests of ratepayers and company while achieving verifiable energy savings and creating a pathway for more savings.

WHEREFORE, the Office of the Public Counsel respectfully submits the foregoing statement of positions.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 16th day of July 2015:

 /s/ Tim Opitz