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	))))	**File No. EO-2015-0055**

MISSOURI DIVISION OF ENERGY'S INTIIAL POST-HEARING BRIEF

COMES NOW the Missouri Division of Energy ("DE"), by and through the undersigned counsel, and for its *Initial Post-Hearing Brief* states:

1. ***Should the Public Service Commission ("Commission") approve, reject or modify Union Electric Company d/b/a Ameren Missouri's ("Ameren Missouri" or "the Company") Missouri Energy Efficiency Investment Act ("MEEIA") Cycle 2 Plan (hereafter the "Plan")?***

DE recommends that the Commission approve Ameren Missouri's Plan as modified by the Non-Unanimous Stipulation and Agreement ("Company Agreement")[1] filed by Ameren Missouri, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, Natural Resources Defense Council, United for Missouri and DE on June 30, 2015. The Company Agreement represents a compromise between the Signatories which improves upon the Company's originally filed Plan by increasing the overall energy savings targets, adding new programs, measures, and implementation specifications, and instituting a collaborative process to determine how additional savings may be achieved. An outright rejection of the Plan would lead to the discontinuation of the Company's energy efficiency

[1] The Staff of the Missouri Public Service Commission filed an objection to the Company Agreement pursuant to Commission Rule 4 CSR 240-2.115(2)(D), which states that "A non-unanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing."

portfolio, poor public policy outcomes, and would be detrimental overall to the public interest. Most critically, rejection of the Company Agreement would lead to the need for increased future capacity additions at greater expense to the Company's ratepayers, as well as a failure to value supply-side and demand-side resources on an equal basis. Even a temporary lapse in program availability would, at the very least, create significant uncertainty for customers, program partners, and the Company while drastically reducing the potential markets for energy efficiency in Missouri in the short term. The Company Agreement represents substantially greater movement towards the goal of achieving all cost-effective demand-side savings compared to both the original filing and the alternative of having no MEEIA portfolio in the Company's Missouri service territory. In contrast, DE recommends that the Non-Company Agreement not be approved by the Commission for reasons subsequently addressed.

As stated in the Supplemental Rebuttal testimony of DE witness Mr. Martin Hyman, the Company Agreement increases the energy savings of the original Cycle 2 filing by 37%.[2] The Company Agreement achieves this higher level of energy savings by adding more Multi-Family Low-Income opportunities, a Small Business Direct Install Program, public sector program eligibility, and clarification of the eligibility of combined heat and power measures under the Company's Business Custom Program.[3] In addition to these new savings, the Company Agreement calls for a collaborative to identify further savings prior to the 2017 and 2018 program years, with the flexibility to do so through new programs, increased participation rates, and other means.[4] While the Company Agreement increases total program costs more than the alternative Agreement signed by the Commission Staff, the Office of the Public Counsel, and several other parties to this case (Amended Non-Unanimous Stipulation and Agreement

[2] Exhibit 202, DE witness Hyman Supplemental Rebuttal, p. 8, ll. 18-19.
[3] Id. at pp. 8-9, ll. 19-1.
[4] Id. at pp. 8-9, ll. 19-4.

Regarding Ameren Missouri's MEEIA Cycle 2, or "Non-Company Agreement"), the increasing costs per unit of energy saved for the majority of the programs specified in the Company Agreement are indicative of increased progress towards achieving all cost-effective energy efficiency programs.[5] The collaborative process defined in the Company Agreement provides an additional path to both potentially improve the cost-effectiveness of the programs explicitly listed in the Agreement as well as add possible new programs and measures.[6]

The Commission should also take note of the testimony of the parties to this case which have not signed on to either agreement, since these parties support the continuation of utility sponsored energy efficiency programs. Brightergy witness Paul Snider stated during the hearing that the discontinuation of Ameren Missouri's MEEIA portfolio in the immediate future would not provide program partners like Brightergy with the certainty that they need.[7] Mr. Snider also stated that he disagreed with Staff's position that if the Commission rejected the Non-Company Agreement, then Ameren's customers would be better off with no utility provided energy efficiency programs (as compared to the energy efficiency programs described by the Company Agreement).[8] National Housing Trust ("NHT") witness Annika Brink testified that NHT, whose multi-family low-income program modifications appear in both agreements, stated during the hearing that she does not want Ameren Missouri's energy efficiency efforts to stop at the beginning of 2016.[9] Tower Grove Neighborhoods Community Development Corporation ("Tower Grove") witness Dana Gray, who is an owner of low-income properties, testified at the hearing that it would be significantly more difficult for low-income property owners to improve

[5] Id. at p. 7, ll. 1-6.
[6] Id. at ll. 6-9.
[7] Tr. Vol. 2, p. 595, ll. 14-18.
[8] Tr. Vol. 2, p. 596, ll. 3-7.
[9] Tr. Vol. 3, p 711, ll. 8-12.

their properties with energy efficiency measures without incentives and rebate programs.[10] Ms. Gray also stated that low-income property owners like herself hoped that Ameren Missouri's MEEIA programs would continue, and that if they were to end at the beginning of 2016 it would not provide the certainty needed by low-income property owners to make investments in energy efficiency at their properties.[11] All three parties to this case which have not signed on to either of the agreements have stated the importance of continuing Ameren Missouri's energy efficiency programs. Additionally, these three parties, which represent energy efficiency contractors, low-income multifamily customers, and low-income property owners, have all stated expressly or implicitly that the discontinuation of Ameren Missouri's energy efficiency programs would be detrimental to the groups they represent.

DE further recommends that the Commission reject the competing Non-Company Agreement, since approval of this agreement will have the same effect as outright rejection of Ameren Missouri's MEEIA Cycle 2 Plan. Commission approval of the Non-Company Agreement amounts to an outright rejection of the Plan because (1) Ameren Missouri has filed an objection to the Non-Utility Agreement, indicating that the proposal is unacceptable to the Company,[12] and (2) MEEIA is voluntary[13] and the Commission therefore may not impose modifications on a MEEIA Plan to which Ameren Missouri does not agree.

The MEEIA Statute states that, "The commission shall ***permit*** electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a ***goal*** of achieving all cost-effective demand-side savings."[14] *(Emphasis added).* The plain meaning of this language is that MEEIA programs are voluntary. This interpretation is made

[10] Tr. Vol. 3, p. 718, ll. 14-21.
[11] Tr. Vol. 3, pp. 717-718, ll. 24- 13
[12] Ameren Missouri's Objection to Non-Unanimous Stipulation and Agreement filed on July 7, 2015
[13] §393.1075.4 RSMo.
[14] Id.

clearer by the Commission's MEEIA Rules, which state that, "The commission shall approve, approve with modification ***acceptable to the electric utility***, or reject such applications for approval of demand-side program plans."[15] *(Emphasis added).* Indeed, based on this language, the Commission can only choose one of three options: to approve the original Plan, to approve the Company Agreement (since it is the only set of modifications which is explicitly acceptable to the Company at this time), or reject the Plan altogether. The modifications in the Non-Company Agreement, whether the Signatories to Non-Company Agreement like it or not, are unacceptable to Ameren Missouri; approving any agreement other than the one Ameren Missouri has accepted amounts to an outright rejection of the Plan and, at the very least, will jeopardize the continuation of utility-sponsored energy efficiency programs in Ameren Missouri's service territory in the immediate future. As described above, an outright rejection of the Plan is also not a recommendable choice.

Ameren Missouri witness Ms. Lynn Barnes has testified repeatedly that Ameren Missouri's financial interests will not be aligned under the Non-Company Agreement. While Ms. Barnes cannot predict what Ameren Missouri will do if the Commission approves the Non-Company Agreement since she is not in charge of the Company,[16] a rejection of the modified Plan or approval of the Non-Company Agreement would at the very least force Ameren Missouri to go back to the drawing board to see if a new MEEIA plan could be developed. However, there is also a possibility that the Company may choose to not offer any MEEIA programs whatsoever if the modifications ordered by the Commission misalign Ameren Missouri's financial interests with promoting energy efficiency.[17] DE witness Mr. Hyman testified that any gap in utility energy efficiency programs would lead to uncertainty for customers, contractors, and the

[15] 4 CSR 240-20.094(3)
[16] Ex. 101, Ameren witness Barnes surrebuttal, p. 28, ll. 18-19.
[17] Tr. Vol. 2, pp. 501-502, ll. 24-5; Ex. 101, Ameren witness Barnes surrebuttal, pp. 28-29, ll. 19-2.

Company, a lack of efficiency savings in the immediate future, and issues with compliance with possible future environmental regulations; this would constitute a poor outcome for customers, Company shareholders, and Missourians as a whole.[18] While Sierra Club witness Mr. Woolf asserted that Ameren Missouri's rejection of a modified Plan to which it did not agree could be imprudent,[19] Mr. Woolf does not account for MEEIA's statutory goal of aligning ratepayer and Company interests. A modification of the Company's Plan other than that contemplated in the Company Agreement has been objected to by Ameren Missouri,[20] and there is no reason to doubt the Company's intention to temporarily halt MEEIA programs should the Commission not accept the reasonable compromise which the Company Agreement outlines. Other than approval of the original Plan or outright rejection of the Plan, approval of the Company Agreement is the Commission's only choice based on its own rules.

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?***

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. The Company Agreement also meets the MEEIA statutory requirement of being "beneficial to all customers in the customer class …, regardless of whether the programs are utilized by all customers,"[21] since the programs will also result in non-energy benefits to all customers and will offset long run capacity increases. DE opposes Staff's

[18] Tr. Vol 2, p. 570, ll. 2-7.
[19] Tr. Vol. 2, pp. 462-463, ll. 25-7.
[20] Ameren Missouri's Objection to Non-Unanimous Stipulation and Agreement filed on July 7, 2015
[21] Id.

narrow interpretation of §373.1075.4 RSMo and 4 CSR 240-20.093(2)(C), as well as the apparent preference by Staff of a cost-effectiveness test other than the Total Resource Cost test ("TRC") which too narrowly focuses on rate impacts without the fair consideration of other customer benefits.

The phrase, "…beneficial to all customers in the customer class" should not be narrowly interpreted to only require a reduction in rates as determined through a ratepayer impact analysis, test, or screening.[22] It is extremely difficult to find a program which passes this restrictive criterion; interpreting the MEEIA statute to only contemplate billing impacts would virtually eliminate the statute's functionality.[23] It is far more meaningful to interpret the word "beneficial" to encompass non-energy benefits, or "NEBs," such as improved health and safety, cleaner air, and reduced arrearages which also result from energy efficiency improvements.[24]

Staff does not believe that Ameren Missouri's Plan as modified by the Company Agreement will be beneficial to all ratepayers because it does not pass the rate impact analysis, which is presented in the testimony of John Rogers.[25] However, Mr. Rogers inexplicably testified that he did not believe that additional cost effective energy efficiency programs identified through the expert panel described in the Non-Company Agreement should have to pass the same rate impact study Staff relied on in determining that Ameren Missouri's modified Plan was not beneficial to all ratepayers.[26] Staff analysis of rate impacts only considered the utility cost test and the additional costs of the proposed throughput disincentive and performance incentive, even though Mr. Rogers testified that the phrase "beneficial to all customers in the customer class," as it appears in the MEEIA statute, could include improved public health outcomes such

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[22] Exhibit 202, DE witness Hyman Supplemental Rebuttal, p. 8, ll. 5-6.
[23] Id. at ll. 6-8.
[24] Id. at 8-11.
[25] Exhibit 709, Staff witness Rogers corrected rebuttal, p. 19-21.
[26] Tr. Vol. 3, p. 737, ll. 17-22.

as reduced healthcare costs; he also stated that improved public health outcomes would benefit all customers, regardless of whether they participated in MEEIA programs.[27] These admissions plainly contradict any strict interpretation which Staff may attempt to force upon the phrase "beneficial to all customers in the customer class."

The Sierra Club's witness Mr. Woolf, despite his client's signing of the Non-Company Agreement, raised concerns about Staff's reliance on the rate impact screening in determining that Ameren Missouri's modified Plan was not beneficial to all customers. In particular, Mr. Woolf testified that rate impact screenings try to calculate increased rates, but it does not calculate them correctly.[28] Rate impact screenings include revenues lost, which are costs that are already embedded in rates and that the utility is entitled to recover; while these costs would be incurred either with or without energy efficiency, a rate impact screening only adds revenues lost to the energy efficiency programs.[29] In other words, rate impact screenings take sunk costs and apply them to a scenario involving energy efficiency without applying similar costs to an alternative scenario.[30] Mr. Woolf also testified that there are non-energy benefits which should be accounted for in cost-effectiveness tests used under MEEIA.[31] While not a preferred cost-effectiveness test under MEEIA, Mr. Woolf testified that societal non-energy benefits such as air emissions reductions above and beyond what is needed for environmental compliance could be considered when evaluating otherwise marginally non-cost effective programs.[32] Tower Grove witness Ms. Gray also agrees that there are quantifiable non-energy benefits which should be included when assessing the cost effectiveness of MEEIA programs.[33] NHT witness Ms. Brink

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[27] Tr. Vol. 3, pp. 740-741, ll. 20-5.
[28] Tr. Vol. 2, pp. 408, ll. 13-15.
[29] Id. at ll. 23-25
[30] Id. at p. 409, ll. 1-6.
[31] Id at p. 420, ll. 1-20.
[32] Id at p. 421, ll. 2-10.
[33] Tr. Vol. 3, pp. 716-717, ll. 20-6.

agrees as well that there are quantifiable, non-energy benefits applicable to multi-family low-income energy efficiency programs, and in instances in which multi-family low-income energy efficiency programs are subject to cost-effectiveness tests, non-energy benefits should be included.[34]

Staff witness Mr. Rogers testified that the Non-Company Agreement will only fulfill the goal of MEEIA to achieve all cost-effective demand-side savings if the Delphi panel described in the Non-Company Agreement is successful in identifying additional cost-effective energy efficiency programs.[35] On the other hand, the Company Agreement's energy efficiency savings target is, by default, 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. This collaborative process will both potentially improve the cost-effectiveness of the planned Cycle 2 programs and possibly add new programs and measures to the Cycle 2 portfolio. The Company Agreement therefore 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.

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?***

DE recommends the Commission approve the demand-side programs investment mechanism as described in the Company Agreement. The structures of the Throughput Disincentive–Net Shared Benefits mechanism and the Performance Incentive mechanism are

[34] Tr. Vol. 3, pp. 705-706, ll. 23-9.
[35] Tr. Vol. 3, p. 738, ll. 11-20.

consistent and predictable, and allow Ameren Missouri certainty in its ability to recover revenues lost and earn a return on its investment based on its achieved energy savings targets. This certainty will encourage the Company to achieve further savings through additional cost-effective programs and increased participation rates in a manner that aligns the incentives of the Company and its customers.

The Throughput Disincentive and Performance Incentive mechanisms in the Non-Company Agreement send the wrong financial signals to the Company and are inconsistent with the MEEIA statute.

The Non-Company Agreement's Throughput Disincentive Mechanism only allows Ameren Missouri to earn a maximum of 133% of its estimated lost marginal revenues from MEEIA-related energy savings.[36] Since numerous parties, including those which signed the Non-Company Agreement have argued that the estimated energy savings targets are too low, it would be inconsistent to limit the recovery of lost marginal revenues to just 33% of additional throughput disincentive associated with the estimated energy-savings. An absolute cap on the recoverable revenues lost is also problematic because it decreases the incentive for the Company to achieve savings beyond the upper Throughput Disincentive level.[37] In contrast, the Company Agreement caps the shared percentage of net shared benefits, which allows the Company to continue earning a set maximum proportion of net shared benefits after reaching a certain targeted level of energy savings while achieving even greater savings; this encourages the Company to identify new programs and increase participation levels.[38]

The MEEIA statute states in part, "It shall be the policy of the state to **value demand-side investments equal to investments in supply and delivery infrastructure** and allow

[36] Exhibit 202, DE witness Hyman Supplemental Rebuttal, p 9. ll. 14-16.
[37] Id. at ll. 20-21.
[38] Id. at p. 10, ll. 1-3.

recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs" (emphases added).[39] The Non-Company Agreement violates the MEEIA statute by failing to reimburse the Company for revenues lost from demand-side measures past the energy savings target.[40] The Commission does not put a cap on the amount on which a utility is allowed to earn a return when it invests in supply side resources; therefore, in order to value these investments equally – and to remain consistent with the statutory language – the Commission should not impose a cap on the amount of energy savings for which Ameren Missouri can earn a percentage of net shared benefits.

The Non-Company Agreement also creates three Performance Incentives ("PI") purportedly based on energy-related savings, demand-related savings, and Multi-Family Low-Income participation rates. However, these PIs send the wrong signal to the Company and are inconsistent with the MEEIA statue. Under the Non-Company Agreement, the Company does not receive the energy-related PI unless this PI is specifically authorized by the Commission following the third-party-mediated process; implicitly, this particular PI would not even be available in the 2016 program year, providing no incentive for energy savings during that time and undervaluing energy efficiency for at least one year.[41] Additionally, this optional energy-savings Performance Incentive is allocated at set amounts for specific percentages of energy savings in a stair-step fashion, which undervalues efficiency achieved throughout the applicable years, such as efficiency achieved during non-peak periods.[42] Similarly, the Non-Company Agreement energy savings PI provides little incentive for the Company to achieve energy savings up to the first energy savings percentage target level, in-between the different percentage

[39] §393.1075.3
[40] Exhibit 202, DE witness Hyman Supplemental Rebuttal, p 10. ll. 8-10.
[41] Id. at ll. 16-18.
[42] Id. at pp. 10-11, ll. 18-1.

targets, and after the final percentage target.[43] This structure significantly undervalues energy savings resulting from investments in demand-side resources and therefore is inconsistent with MEEIA's requirement, "… to value demand-side investments equal to investments in supply and delivery infrastructure …"[44] In contrast, the Company Agreement provides an energy savings PI for all three years and allows the Company to continue collecting the PI once it reaches its maximum percent energy savings target.[45] In this manner, the PI continues to value demand-side investments equally to supply-side investments even as the Company achieves greater energy savings through new programs and increased participation rates.[46]

While it conceptually makes sense to promote demand savings investments by the Company with a PI, the design of the demand-related PI in the Non-Company Agreement is flawed, since it provides no incentives for demand savings below the Non-Company Agreement's target; this is despite the fact that demand savings have some value below what was used to calculate this target.[47] The Non-Company Agreement also lacks an incremental PI for demand savings above 1,000,000 kW.[48] This structure significantly undervalues energy savings resulting from investments in demand-side resources above or below the given thresholds and, like the energy savings PI in the Non-Company Agreement, is therefore inconsistent with MEEIA's requirement, "… to value demand-side investments equal to investments in supply and delivery infrastructure …."[49] While the Company Agreement does not have an explicit demand savings target or accompanying PI, DE notes that demand savings are incidentally related to energy savings for energy efficiency programs; consequently, the energy efficiency programs

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[43] Id at p. 11, ll. 1-3.
[44] §393.1075.3
[45] Exhibit 202, DE witness Hyman Supplemental Rebuttal, p 13. ll. 8-9.
[46] Id. at ll. 9-12.
[47] Id. at p. 11, ll. 12-16.
[48] Id at p. 12, ll. 4-5.
[49] §393.1075.3

under the Company Agreement will result in demand savings in addition to energy savings.[50] Since demand savings accompany energy savings, it is more appropriate to incentivize utilities with an energy-related PI than a demand-related PI in the context of an energy efficiency-specific portfolio. The Company Agreement's energy-related PI, as previously indicated, provides a continuous incentive for energy savings promoted by the Company during all three program years while only capping the maximum percentage of net shared benefits achieved at or beyond a certain target savings level.[51] In addition to promoting energy savings throughout the target levels and beyond, the Company Agreement's energy-related PI indirectly promotes demand savings at the same time based on the relationship between energy and demand without the need for an additional, unrelated PI.

DE continues to support increased participation in multifamily low-income programs, as evidenced by the inclusion of the expanded savings targets and improved program details in the Company Agreement. However, the participation-related PI in the Non-Company Agreement provides an inappropriate reward structure since it pays the Company additional money based on a percentage of program costs.[52] While this may at first seem like a way to divorce savings and net shared benefits related issues from a set of programs which are exempt from cost-effectiveness testing, this mechanism would only encourage the Company to spend money on multifamily low-income programs regardless of their impacts on energy or demand savings. The Non-Company Agreement's participation-related PI might not result in increased participation rates at all, since there is no reason to assume that full budget expenditure is correlated with increased participation.[53]

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[50] Tr. Vol. 2, p. 568, ll. 11-15.
[51] Exhibit 202, DE witness Hyman Supplemental Rebuttal, p 13. ll. 8-12.
[52] Id. at p. 12, ll. 11-12.
[53] Id. at ll. 16-22.

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

DE recommends that the Commission approve variances from the Commission's rules consistent with the Company Agreement.

WHEREFORE, DE respectfully files its Initial *Post-Hearing 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 13th day of August, 2015.

/s/ Alexander Antal