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| Exhibit No.: | |
| Issue: | Non-Unanimous Stipulation and Agreement |
| Witness: | Martin Hyman |
| Sponsoring Party: | Missouri Department of Economic Development – Division of Energy |
| Type of Exhibit: | Supplemental Rebuttal Testimony |
| Case No.: | EO-2015-0055 |

**MISSOURI PUBLIC SERVICE COMMISSION**

**UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI**

**CASE NO. EO-2015-0055**

# SUPLLEMENT REBUTTAL TESTIMONY

**OF**

**MARTIN R. HYMAN**

**ON**

**BEHALF OF**

**MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT**

**DVISION OF ENERGY**

Jefferson City, Missouri
July 15, 2015

**BEFORE THE PUBLIC SERVICE COMMISSION**
**OF THE STATE OF MISSOURI**

| | | |
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| In the Matter of Union Electric Company<br>d/b/a Ameren Missouri's 2nd Filing to Implement<br>Regulatory Changes in Furtherance of<br>Energy Efficiency as allowed by MEEIA | )<br>)<br>)<br>) | EO-2015-0055 |

**AFFIDAVIT OF MARTIN HYMAN**

| | | |
|---|---|---|
| **STATE OF MISSOURI** | ) | |
| | ) | **ss** |
| **COUNTY OF COLE** | ) | |

Martin R. Hyman, of lawful age, being duly sworn on his oath, deposes and states:

1. My name is Martin R. Hyman. I work in the City of Jefferson, Missouri, and I am employed by the Missouri Department of Economic Development as a Planner II, Division of Energy.
2. Attached hereto and made a part hereof for all purposes is my Supplemental Rebuttal Testimony on behalf of the Missouri Department of Economic Development – Division of Energy.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge.

____________________________________
Martin R. Hyman

Subscribed and sworn to before me this 15th day of July, 2015.

____________________________________
Notary Public

My commission expires:

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1 **I. INTRODUCTION AND SUMMARY OF TESTIMONY**

2 **Q. Please state your name and business address.**

3 A. My name is Martin R. Hyman. My business address is 301 West High Street, Suite 720,

4 PO Box 1766, Jefferson City, Missouri 65102.

5 **Q. Are you the same Martin R. Hyman that filed Surrebuttal Testimony[1] in the current**

6 **Missouri Energy Efficiency Investment Act ("MEEIA") case related to Union**

7 **Electric Company d/b/a Ameren Missouri's ("Ameren Missouri" or "the**

8 **Company") Cycle 2 portfolio filing (EO-2015-0055)?**

9 A. Yes.

10 **Q. What is the purpose of your Supplemental Rebuttal Testimony?**

11 A. I will explain why DE joined the June 30th, 2015 Non-Unanimous Stipulation and

12 Agreement ("Company Agreement")[2] to this case with Ameren Missouri, Natural

13 Resources Defense Council ("NRDC"), Kansas City Power and Light Company

14 ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO"), and United

15 For Missouri, Inc. ("UFM"); I will also compare the Company Agreement to the

16 Amended Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's

17 MEEIA Cycle 2 ("Non-Company Agreement")[3] as signed by the Public Service

18 Commission ("Commission") Staff ("Staff"), the Office of the Public Counsel ("OPC"),

19 the Midwest Energy Consumers' Group ("MECG"), the Missouri Industrial Energy

20 Consumers ("MIEC"), and Earth Island Institute d/b/a Renew Missouri ("Renew

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[1] Missouri Public Service Commission Case No. EO-2015-0055, *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*, Surrebuttal Testimony of Martin R. Hyman on Behalf of the Missouri Department of Economic Development, Division of Energy, April 27th, 2015.
[2] *Ibid*, Non-Unanimous Stipulation and Agreement ("Company Agreement"), June 30th, 2015.
[3] *Ibid*, Amended Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2 ("Non-Company Agreement"), July 8th, 2015.

1 Missouri"). In particular, I will explain how the Company Agreement substantially
2 improves energy savings compared to the Company's original proposal by adding
3 specific new offerings and a collaborative process based on an agreement between a
4 diverse set of stakeholders, including the Company; by contrast, the Non-Company
5 Agreement attempts to require the Company to participate in a voluntary statute with, a
6 less-workable throughput disincentive mechanism, and Performance Incentives ("PI")
7 which provide incorrect signals to the Company. The Non-Company Agreement also
8 imposes an unreasonable timeline for implementation of changes in 2017 and 2018.

9 **Q. What is your recommendation?**

10 A. Since the Commission's MEEIA rules at 4 CSR 240-20.094(3) only allow it to accept the
11 Company's original filing, accept the filing with modification acceptable to the Company
12 (i.e., the Company Agreement), or reject the Cycle 2 proposal entirely, DE recommends
13 that the Commission approve the Company Agreement. While the Agreement is a
14 compromise, it represents substantially greater movement towards the goal of achieving
15 all cost-effective demand-side savings compared to both the original filing and the
16 alternative of no MEEIA portfolio in the Company's Missouri service territory.

17 **II. IMPORTANCE OF THE COMPANY'S AGREEMENT TO MODIFICATIONS**

18 **Q. Why is it important that the Company signed a particular Agreement?**

19 A. As previously indicated, Staff, OPC, MIEC, MECG, and Renew Missouri signed a Non-
20 Company Agreement. Regardless of any differences or similarities between the language
21 of the two competing Agreements, the language of the MEEIA rules at 4 CSR 240-
22 20.094(3) is clear: the Commission may only approve the Company's original filing,
23 approve it with modifications accepted by the Company (i.e., as contemplated in the

1 Company Agreement), or entirely reject the Company's proposal. Since the Company
2 already indicated its objection to the Non-Company Agreement,[4] the Company
3 Agreement is the only set of modifications which Ameren Missouri is willing to accept
4 and which the Commission may approve if certainty is to be provided regarding a timely
5 second cycle of Ameren Missouri MEEIA programs.

6 **Q. Do you recommend that the Commission approve the Non-Company Agreement?**

7 A. No. The Non-Company Agreement attempts to require the Company to participate in a
8 voluntary statute with lower added savings over the original Cycle 2 filing, a replacement
9 of the Throughput Disincentive – Net Shared Benefits ("TD-NSB") mechanism with a
10 less workable alternative, and the use of altered Performance Incentives ("PI") which
11 provide incorrect signals to the Company. The Non-Company Agreement also imposes a
12 secondary process for modifying the Company's Cycle 2 portfolio which assumes an
13 unreasonable timeline for implementation.

14 **Q. Do you recommend that the Commission approve the Company Agreement?**

15 A. Yes. Since the Company has signed the Agreement to which DE is also a Signatory, DE
16 supports the Company's recommendation to approve the Company's Cycle 2 filing with
17 modifications acceptable to the Company, as contemplated by the MEEIA rules. DE
18 strongly recommends against rejecting the Company Agreement for the reasons which I
19 discussed on page 20 of my Surrebuttal Testimony, including the resulting uncertainty for
20 trade allies and participants and the potential loss of avoided future capacity additions.

[4] *Ibid*, Ameren Missouri's Objection to Non-Unanimous Stipulation (as Amended) Filed by the Office of the Public Counsel, Missouri Public Service Commission Staff, Missouri Industrial Energy Consumers and Earth Island Institute d/b/a Renew Missouri, July 10th, 2015.

1 **Q. Why did DE join the Company Agreement?**

2 A. As discussed in my Surrebuttal Testimony, DE supports the continuation of energy
3 efficiency programs in Ameren Missouri's service territory consistent with the goals of
4 the MEEIA statute and rules. The Company Agreement includes modifications to the
5 originally filed Cycle 2 plan which are acceptable to a diverse group of Signatories,
6 including DE and Ameren Missouri.

7 **Q. How is the set of Signatories to the Company Agreement "diverse?"**

8 A. The Signatories include NRDC and DE, both of which raised significant concerns
9 regarding the proposed savings and cost-effectiveness of the original proposal. NRDC
10 advocates on behalf of environmental issues, while one of DE's functions is to encourage
11 collaboration amongst public, private, and non-profit entities on energy efficiency issues.

12 **Q. Is the fact that the Company must explicitly agree to any Cycle 2 modifications**
13 **acknowledged in the Non-Company Agreement?**

14 A. No. Since the Company did not sign this alternative agreement, the Signatories repeatedly
15 request the Commission to "order" the Company to make specific program filings; for
16 example, paragraph 2 of the Non-Company Agreement states, "The Signatories request
17 that the Commission **order** Ameren Missouri to **make** certain filings …" (emphases
18 added).[5] Paragraph 2.d of the Non-Company Agreement also forces Ameren Missouri to
19 "redo" its 2017 and 2018 portfolio energy savings targets based on an expert panel's
20 estimates, as filtered by a Staff-recommended mediator and approved by the
21 Commission.[6]

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[5] Non-Company Agreement, page 3.
[6] *Ibid*, page 4.

1 **Q. Is the timeline mandated by Paragraph 2.d of the Non-Company Agreement**
2 **realistic?**
3 A. No. Paragraph 2.d stipulates in part that, "… By October 31, 2015, Ameren Missouri
4 Shall issue a request for proposal (RFP) for a third-party mediator who shall select a
5 panel of experts to recommend possible increases in the projected kWh savings of the
6 total portfolio…."[7] Further on, Paragraph 2.d.ii requires this mediator to issue a report on
7 recommended adjustments to the Company's 2017 and 2018 portfolio energy savings
8 targets by April 15th, 2016.[8] The date required for issuing the RFP is less than three
9 months away from the hearings in this case, which does not account for the time required
10 to develop the RFP based on when the Commission will make its decision in the case;
11 moreover, the deadline for the mediator's issuance of its report is only six months from
12 the issuance of the RFP and does not consider the selection process of the third-party
13 mediator or the expert panel, much less the time required for the expert panel to conduct
14 a study or the time required for the third-party mediator to consider the results of the
15 expert panel.
16 **Q. What input may parties to this case provide in this third-party-mediated process**
17 **prior to the release of the third-party mediator's report?**
18 A. The Non-Company Agreement provides few mechanisms for input other than the
19 following sentence: "The Commission's Staff shall provide input to Ameren Missouri in
20 the formation of the RFP and the selection of the third-party mediator."[9] In other words,
21 the only party to this case besides the Company which can influence the selection of the

[7] *Ibid*.
[8] *Ibid*.
[9] *Ibid*.

1 third-party mediator or the expert panel is the Staff. There is also no opportunity for
2 commenting on this third-party-mediated process prior to the issuance of the April report.
3 **Q. Can the Company be "forced" to have any particular MEEIA program or program**
4 **portfolio?**
5 A. No. While conditions such as those mentioned above might work under an Energy
6 Efficiency Resource Standard with regulatory targets, MEEIA is purely voluntary at this
7 time. This is clear from the language of the MEEIA statute at §393.1075.4 RSMo.: "The
8 commission shall **permit** electric corporations to implement commission-approved
9 demand-side programs proposed pursuant to this section with a **goal** of achieving all cost-
10 effective demand-side savings" (emphases added).
11 **III. COLLABORATIVE INCREASE TO SAVINGS TARGETS**
12 **Q. Several parties to the case indicated that the Company had not made significant**
13 **progress toward the above-mentioned "goal of achieving all cost-effective demand-**
14 **side savings," particularly as reflected at 4 CSR 240-20.094(2). How much farther**
15 **towards this goal do the two agreements move?**
16 A. Aside from the additional savings which might be added through the stakeholder
17 processes listed in the two Agreements, each builds upon the initially-filed three-year
18 cumulative total of 426.4 GWh. However, the Non-Company Agreement only increases
19 this amount to 459.4 GWh,[10] while the Company Agreement substantially increases these
20 savings to 583.6 GWh.[11]

[10] *Ibid,* Appendix A.
[11] Company Agreement, page 4.

1 **Q. The Company Agreement also further increases the total program costs compared**
2 **to the Non-Company Agreement.[12] Is this higher cost for additional savings a "bad**
3 **deal" for ratepayers?**

4 A. No. The increasing costs per unit of energy saved for the majority of the programs
5 specified in the Company Agreement are indicative of increased progress towards
6 achieving all cost-effective energy efficiency programs. Moreover, the Company
7 Agreement provides an additional path to improve the cost-effectiveness of both these
8 programs and the entire portfolio over the course of the second cycle through a
9 collaborative process. This collaborative will work to identify the potential for new
10 programs, increasing participation rates, and other alternatives to achieve deeper
11 savings.[13] Increased participation rates in particular will drive the unit costs of achieved
12 savings even lower.

13 **Q. Does the third-party-mediated process mandated by the Non-Company Agreement**
14 **involve the consideration of new programs?**

15 A. It will involve a, "… particular focus on program participation rates."[14]

16 **Q. Is the third-party-mediated process mandated by the Non-Company Agreement**
17 **collaborative?**

18 A. No, as explained above.

[12] *Ibid*.
[13] *Ibid*, pages 9-10.
[14] Non-Company Agreement, page 4.

1 **Q. Will the programs resulting from the Company Agreement and the collaborative**
2 **which it requires be, "…beneficial to all customers in the customer class in which**
3 **the programs are proposed, regardless of whether the programs are utilized by all**
4 **customers" (§393.1075.4 RSMo.)?**

5 A. Yes. As indicated in my Surrebuttal Testimony, "beneficial" cannot be narrowly
6 interpreted in the sense of reducing rates as per the ratepayer impact test. It is extremely
7 difficult to find a program which passes this restrictive criterion; interpreting the MEEIA
8 statute to only contemplate billing impacts would virtually eliminate its functionality. It is
9 far more likely meaningful to interpret the word "beneficial" to encompass non-energy
10 benefits, or "NEBs," such as improved health and safety, cleaner air, and reduced
11 arrearages which also result from energy efficiency improvements.[15] It is safe to assume
12 that the Company Agreement's resulting programs will be beneficial as per the MEEIA
13 statute, since energy savings are increasing substantially under the Company Agreement
14 in comparison to both the original Cycle 2 filing and the alternative of no MEEIA
15 programs.

16 **Q. How do the energy savings increase substantially under the Company Agreement**
17 **relative to the other alternatives which have been presented to the Commission?**

18 A. Relative to the Company's original Cycle 2 filing, the Company Agreement increases the
19 energy savings of the original Cycle 2 filing by 37%[16] by adding more Multi-Family
20 Low-Income ("MFLI") opportunities, a Small Business Direct Install Program, a public
21 sector program, as well as clarifying the eligibility of combined heat and power ("CHP")

[15] Hyman, pages 7-9 and 11-14, lines 9-19, 1-22, 1-21, 1-7, and 3-22, 1-18, 1-17, and 1-10.
[16] Company Agreement, page 3, paragraph 7.a.

1 measures under the Company's Business Custom Program.[17] In addition to these new
2 savings, the Company Agreement calls for a collaborative – as mentioned above – to
3 identify further savings prior to the 2017 and 2018 program years, with the flexibility to
4 do so through new programs, increased participation rates, and other means.[18] Finally, the
5 Company Agreement rebases the Throughput Disincentive – Net Shared Benefits ("TD-
6 NSB") and Performance Incentive ("PI") to reflect the changes to the original Cycle 2
7 filing.[19]

8 **IV. THROUGPUT DISINCENTIVE AND PERFORMANCE INCENTIVE**
9 **STRUCTURES**

10 **Q. Does the Non-Company Agreement use a TD-NSB mechanism?**

11 A. No. It uses a mechanism most closely related to "lost marginal revenues" which requires
12 the use of billing units, but provides no detail on what billing units will be used prior to
13 the filing of a rate case or whether the Company would agree to these units. Additionally,
14 the mechanism calls for withholding 33.33% of the "throughput disincentive" subject to
15 true-up, with the ability for the Company to earn up to 133% of revenues lost. However,
16 this 133% of revenues is a hard cap,[20] as opposed to the TD-NSB sharing percentage in
17 the Company Agreement.[21] The Company would receive no lost revenues above the
18 133% cap under the Non-Company Agreement.

19 **Q. Why is an absolute revenue cap problematic?**

20 A. An absolute cap on the recoverable revenues lost decreases the incentive for the
21 Company to achieve savings beyond the capped level. By contrast, capping the shared

[17] *Ibid*, pages 4-9.
[18] *Ibid*, pages 9-10.
[19] *Ibid*, pages 10-14.
[20] Non-Company Agreement, pages 7-8, paragraph 6.
[21] Company Agreement, pages 10-13.

1 percentage of NSB allows the Company to continue earning a proportion of NSB while
2 achieving additional savings; the ability for the Company to earn additional NSB entices
3 it to achieve greater savings through new programs and increased participation levels.

4 **Q. Is an absolute revenue cap consistent with the MEEIA statute?**

5 A. No. The MEEIA statute at §393.1075.3 states in part, "It shall be the policy of the state to
6 **value demand-side investments equal to investments in supply and delivery**
7 **infrastructure** and allow recovery of all reasonable and prudent costs of delivering cost-
8 effective demand-side programs" (emphases added). By failing to reimburse the
9 Company for revenues lost from demand-side revenues past the energy savings target
10 cap, the Non-Company Agreement violates the MEEIA statute at §393.1075.3.

11 **Q. How does the Non-Company Agreement structure the PI mechanism?**

12 A. The Non-Company Agreement creates three PIs based on energy-related savings,
13 demand-related savings, and MFLI participation rates.[22]

14 **Q. Is the energy-related PI in the Non-Company Agreement similar to the PI in the**
15 **Company Agreement?**

16 A. No. The Company does not receive the energy-related PI at all under the Non-Company
17 Agreement unless this PI is specifically authorized by the Commission following the
18 third-party-mediated process in Paragraph 2b;[23] further, this PI is allocated at set amounts
19 for specific percentages of energy savings in a step-wise, non-linear fashion,[24] as opposed
20 to the linear structure described in the Company Agreement.[25] This proposal undervalues
21 efficiency achieved throughout the year, including efficiency achieved during non-peak

[22] Non-Company Agreement, pages 8-9, paragraph 7.
[23] *Ibid*, page 4, paragraph 2.d.iv.
[24] *Ibid*, page 9, paragraph 7.c.
[25] Company Agreement, pages 10-13.

1 periods. It also provides little incentive for the Company to achieve energy savings up to
2 the first energy savings percentage target level, in-between the different percentage
3 targets, and after the final percentage target.

4 **Q. Is the structure of the Non-Company Agreement's energy-related PI consistent with**
5 **the MEEIA statute at §393.1075.3?**

6 A. No. The energy-related PI is not provided under the Non-Company Agreement in 2016 at
7 all, and is only an option which may be approved by the Commission for 2017 and 2018
8 if the third-party-mediated savings target adjustments are approved for those same years.
9 This significantly undervalues energy savings resulting from investments in demand-side
10 resources.

11 **Q. Is the Non-Company Agreement's demand-related PI reasonable?**

12 A. No. While it conceptually makes sense to promote demand savings investments by the
13 Company with a PI, the design of the demand-related PI in the Non-Company Agreement
14 is flawed. It provides no incentives for demand savings below the target,[26] despite the
15 fact– that demand savings have some value below what was used to calculate the Non-
16 Company Agreement's target. By contrast, the Non-Company Agreement provides very
17 high paybacks to the Company if it does achieve 100% or more of its target. At its
18 maximum target level of 1,000,000 kWh, this PI provides a payout of nearly $82
19 million;[27] the Non-Company demand-related PI thus far exceeds the net present-value
20 three-year total energy-related PI in the Company Agreement of $36.2 million (2016
21 dollars) at 130% of the energy savings target.[28]

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[26] Non-Company Agreement, pages 8-9, paragraph 7a.
[27] *Ibid*.
[28] Company Agreement, Appendix A, page 1.

1 **Q. Is the structure of the Non-Company Agreement's demand-related PI consistent**
2 **with the MEEIA statute at §393.1075.3?**
3 A. No. The demand-related PI is not provided under the Non-Company Agreement if
4 demand savings are achieved below the portfolio target, and an incremental PI is not
5 provided for savings above 1,000,000 kW.[29] This significantly undervalues energy
6 savings resulting from investments in demand-side resources above or below the given
7 thresholds.
8 **Q. Does the participation-related PI[30] focus on the correct design aspects of the**
9 **Company's MEEIA program?**
10 A. No. There are many good reasons to encourage participation in MFLI programs; as
11 indicated in my Rebuttal Testimony, DE supports increased participation in these
12 programs. However, solely focusing a participation-related PI on MFLI programs does
13 not meet the need for increased participation in other programs. Low participation rates
14 are already partially responsible for the demise of some of the Company's other
15 programs, such as the Energy Star® New Homes program.
16 Aside from the need to broaden the scope of the participation PI, the participation-related
17 PI provides an inappropriate reward structure since it pays the Company additional
18 money based on a percentage of program costs[31]. While this may seem like a way to
19 divorce savings and NSB issues from a set of programs which are exempt from cost-
20 effectiveness testing under §393.1075.4 RSMo., this mechanism creates a new problem:
21 the Company has an incentive to spend money on MFLI programs regardless of their
22 impacts.

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[29] Non-Company Agreement, pages 8-9, paragraph 7a.
[30] *Ibid*, page 9, paragraph 7b.
[31] *Ibid*.

1 **Q. How are the collaborative, TD-NSB, and PI designed through the Company**
2 **Agreement in a more flexible manner which values demand-side savings**
3 **investments equally to traditional supply-side investments?**

4 A. The language regarding the collaborative is specific enough to indicate what programs
5 the Company should consider – such as whole building approaches – yet the Agreement
6 also allows the Company and other stakeholders to add in new programs, participation
7 mechanisms, and ideas.[32] Additionally, the Agreement specifically describes how the
8 TD-NSB and PI will function, yet allows the Company to continue collecting the PI once
9 it reaches its maximum percent energy savings target.[33] In this manner, the PI continues
10 to value demand-side investments equally to supply-side investments even as the
11 Company achieves greater energy savings through new programs and increased
12 participation rates.

13 **V. CONCLUSIONS**

14 **Q. Please summarize your arguments and the position of DE.**

15 A. The Company Agreement represents the good-faith effort of the Signatories. This
16 Agreement provides for substantially improved energy efficiency savings through new
17 programs, increased participation rates, and a collaborative process; moreover, the
18 Company has only signed this Agreement (as opposed to the Non-Company Agreement).
19 Therefore, the Company Agreement should be approved.

20 **Q. Is the Agreement perfect?**

21 A. No, but it represents both a reasonable resolution to the case and a significant
22 improvement over the initial set of energy savings targets proposed by the Company. DE

[32] Company Agreement, pages 9-10.
[33] *Ibid*, pages 10-14.

1 continues to believe that more savings opportunities exist through a variety of channels;
2 consequently, we look forward to working with the Company and the other parties to this
3 case in the collaborative called for by the Agreement to identify additional opportunities
4 to achieve all cost-effective demand-side.
5 Based on the relative strength of this Agreement and the Commission's rules at 4 CSR
6 240-20.094(3) which only allow the acceptance of modifications to MEEIA applications
7 which the Company also accepts, DE recommends that the Commission adopt the
8 Company Agreement.
9 **Q. Does this conclude your Supplemental Rebuttal Testimony?**
10 A. Yes.