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	)	Case No. EO-2015-0055
Regulatory Changes in Furtherance of Energy	)	
Efficiency as Allowed by MEEIA	)	

INITIAL BRIEF OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

Comes now the Missouri Industrial Energy Consumers ("MIEC") and for its Initial Brief states as follows:

I. Introduction

Through the testimony of Maurice Brubaker, the MIEC has taken the following positions:

> (1) this Commission should judge the efficacy of MEEIA programs using realistic achievable potential ("RAP") rather than maximum achievable potential ("MAP");
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> (2) this Commission should judge the cost of MEEIA programs using the total resource cost test ("TRC") rather than the utility cost test ("UCT"); and most significantly
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> (3) this Commission should not adopt revenue decoupling.

Judging MEEIA programs based upon MAP and the UCT would expose customers to significantly higher electric rates and costs. Under MAP, MEEIA programs' benefits, by definition, are set unrealistically high. In fact, RAP correctly defines what "realistic achievable potential" is and that is why RAP should be used. Under the UCT, costs that consumers must directly bear (such as the cost of LED light bulbs or energy efficient appliances) are not considered. All costs of a program should be considered since customers must pay both the direct costs and the indirect costs that are built into higher rates and that is why the TRC test should be used to judge a MEEIA program's cost. The programs that are suggested for adoption through the two non-unanimous stipulations in this case largely respect these concerns.

The MIEC also supports using an Evaluation, Measurement and Verification ("EM&V") approach, rather than the "deemed savings" approach, to the determination of lost revenues associated with energy efficiency programs. Deemed savings are speculative and not reliable as a measure of lost revenue.

Last, decoupling is illegal retroactive ratemaking and is bad public policy. Decoupling shifts risks from the utility to customers, sends the wrong price signals to both utilities and customers, and will significantly increase the volatility in electric rates.

II. A MEEIA Program Should Be Judged By RAP

Ameren Missouri designed its demand side management programs based upon the reasonably achievable potential of the program, or RAP. The MIEC, as well as most other parties to this proceeding, agrees with that approach because it is realistic and reasonable. The Sierra Club, however, proposes that MEEIA programs be judged by MAP. RAP means:

> energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and realistic implementation conditions. Realistic achievable potential establishes a realistic target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a moderate portion of total program costs and longer customer payback periods when compared to those associated with maximum achievable potential.[1]

Maximum achievable potential of the program, or MAP, on the other hand, means:

> energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and ideal implementation conditions. Maximum achievable potential establishes a maximum target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a very high portion of total programs costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper-boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed.[2]

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1 Regulation 4 CSR240.3.164(1)(T). Emphasis added.

2 Regulation 4 CSR240.3.164(1)(N). Emphasis added.

Mr. Brubaker reviewed a significant amount of data provided by Ameren Missouri on the cost to consumers of judging MEEIA programs by the MAP standard. From that review, he concluded:

> MAP obviously places tremendous risk on customers for the potential of a benefit that may or may not materialize almost 20 years into the future. As Ameren Missouri explained on page 9 of Chapter 10, the MAP portfolio would cost roughly twice as much as the RAP portfolio in the years 2016 through 2018. Over the planning horizon, the MAP budget would be $2.45 billion as compared to $1.27 billion for RAP, or 93% more costly than RAP, even though energy savings would be only about 36% greater.
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> **Q WHAT IS YOUR RECOMMENDATION?**
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> A After having reviewed this material, my recommendation is that Ameren Missouri continue to plan using the RAP portfolio, and not the MAP portfolio for the reasons noted above, namely that the MAP portfolio would be significantly more expensive, because even optimistically net benefits are at least 20 years into the future. <u>In addition, because of the very aggressive nature of a MAP portfolio and the unrealistic assumptions that underlie it, there is a high risk of not being able to achieve the indicated benefits, even 20 years out. In summary, the value proposition for MAP versus RAP is not at all attractive from a consumer point of view.</u>[3]

This Commission should accept Mr. Brubaker's, and Ameren Missouri's, recommendation to judge MEEIA programs based upon RAP, namely on "expected program participation and realistic implementation conditions" rather than upon "conditions that are ideal and not typically observed." This is particularly true where the additional costs, more than $1 billion, are borne by consumers, and the additional benefit to consumers from more MEEIA programs under the MAP test "bears a high risk of" going unrealized.

III. <u>A MEEIA Program's Cost Should Be Measured By The TRC Test</u>

The Sierra Club criticizes Ameren Missouri for giving insufficient weight, in the Sierra Club's opinion, to the utility cost test, or UCT, and too much weight to the total resource cost test, or

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[3] Brubaker Surrebuttal, Ex.1000, p. 5, l. 11 – p. 6, l. 13. Emphasis added.

TRC.[4] The MIEC opposes providing more significance to the UCT. That is "because DSM programs score better under UCT than under TRC only because a significant amount of cost – the cost borne directly by the consumer in DSM implementation – is ignored."[5] Stated differently, since customers are bearing the cost of the MEEIA programs, the costs that they must pay directly, and not just the costs that they pay indirectly through higher electric rates, must be considered. In fact, the General Assembly expressed a preference for the TRC test. Section 393.1075.4 provides:

> 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. Recovery for such programs shall not be permitted unless the programs are approved by the commission, result in energy or demand savings <u>and are beneficial to all customers in the customer class in which the programs are proposed</u>, regardless of whether the programs are utilized by all customers. <u>The commission shall consider the total resource cost test a preferred cost-effectiveness test</u>. Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest. <u>Nothing herein shall preclude the approval of demand-side programs that do not meet the test if the costs of the program above the level determined to be cost-effective are funded by the customers participating in the program</u> or through tax or other governmental credits or incentives specifically designed for that purpose.[6]

The Sierra Club emphasizes the language of section 393.1075.4 that the Commission is not precluded from approving MEEIA programs that do not meet the TRC test so long as the noneconomic costs of the particular program are borne by the customers who participate in the program. But that permissive language of the statute certainly does not trump the mandatory language of the statute that the Commission "shall consider the total resource cost test a preferred cost-effectiveness test." The Sierra Club's criticism of Ameren Missouri for preferring the TRC test

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[4] Woolf Rebuttal, Ex.1200, p. 46, l. 10 – p. 51, l. 9.

[5] Brubaker Surrebuttal, Ex.1000, p. 2, ll. 16-20.

[6] Emphasis added.

is at odds with the mandatory language of section 393.1075.4. Moreover, placing more emphasis on the UCT is unreasonable. As Mr. Brubaker explains:

> The TRC involves a consideration of costs incurred by the utility as well as costs directly incurred by the participant. The UCT, if used as a screening mechanism, would look only at the costs incurred by the utility, and would ignore costs that would have to be incurred by the participant in order to take part in the programs and make them work. From an overall resource perspective, it is not reasonable to ignore costs that would be incurred by the customer, such as the additional cost of a more efficient device relative to a conventional device, or the impact of replacing a device before the end of its useful life.[7]

For these reasons, the Commission should reject the Sierra Club's criticism of Ameren Missouri for preferring the TRC test over the UCT.

IV. Lost Revenue And Throughput Disincentive

Currently, the throughput disincentive is determined using a "deemed savings" approach that assumes that the actual lost sales attributable to energy efficiency programs are equal to the energy savings that were assumed before the programs were implemented. MIEC urges the Commission to abandon this unreliable practice and, in its place, to adopt an EM&V approach. An EM&V approach is more reliable than deemed savings as the EM&V approach actually attempts to determine actual sales losses, rather than assume that the prediction of losses was accurate. Ameren Missouri and its customers both deserve this more accurate approach.

V. Decoupling Is Illegal Retroactive Ratemaking And Is Bad Public Policy

One of the biggest problems facing utilities who must spend money to implement energy efficiency programs is the so-called "throughput disincentive." No for-profit business wants to spend its money to sell less of its product, and yet that is exactly what energy efficiency programs require utilities to do. In response, Ameren Missouri has understandably proposed a mechanism to counteract the throughput disincentive. No party begrudges Ameren Missouri a reasonable

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[7] Brubaker Surrebuttal, Ex. 1000, p. 7, ll. 2-9.

mechanism for this purpose. However, the parties' biggest dispute in this case centers on the fairness of the mechanism Ameren Missouri has proposed. In response to that dispute, the NRDC has proposed revenue decoupling.[8] As Mr. Brubaker explains in his Surrebuttal:

> Decoupling generally entails establishing a mechanism which guarantees the level of revenue to be collected by a utility between rate cases at the level set in the most recent rate case. There would be periodic adjustments to bring the actual level of revenues either up, or down, to the level of dollars set in that preceding rate case.[9]

While revenue decoupling certainly might address the throughput disincentive, it creates a whole new set of problems, problems that are more significant than the throughput disincentive it is designed to rectify. Because decoupling would be such a sea change in regulation for Missouri, this Commission wisely set up a separate docket to receive comments from interested parties in order to study the issue further. *See* Case No. AW-2015-0282. While it appears that the parties to this case are content to have decoupling addressed exclusively in that docket, comment here is still warranted since decoupling was proposed by witnesses in this case. As explained in detail below, decoupling as proposed by the NRDC is both illegal and bad public policy.

The bible for ratemaking law in Missouri is the Missouri Supreme Court decision in *State ex rel. Util. Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n,* 585 S.W.2d 41, (Mo.banc 1979). There, the Missouri Supreme Court noted that the Commission is to set the "rate to be charged." If that rate is too high or too low, the Commission cannot legally change it to compensate for over or under recovery of costs or revenues:

> However, to direct the commission to determine what a reasonable rate would have been and to require a credit or refund of any amount collected in excess of this amount would be retroactive ratemaking. The commission has the authority to determine the rate to be charged, § 393.270. In so determining it may consider past excess recovery insofar as this is relevant to its determination of what rate is necessary to provide a just and reasonable return in the future, and so avoid further

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8 Mosenthal Rebuttal, Ex. 301, p. 44, l. 20 – p. 45, l. 5; Gupta Rebuttal, Ex. 300, p. 4, l. 2 – p. 7, l. 17.

9 Brubaker Surrebuttal, Ex. 1000, p. 7, ll. 17-20.

> excess recovery, *See State ex rel. General Telephone Co. of the Midwest v. Public Service Comm'n*, 537 S.W.2d 655 (Mo.App.1976). It may not, however, redetermine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his property without due process.[10]

The annual adjustment that the NRDC proposes to guarantee Ameren Missouri's revenue is illegal retroactive ratemaking because "the commission [would be] determin[ing] what a reasonable rate would have been and … require[ing] a credit or refund of any amount collected in excess of this amount."

Not only is decoupling illegal, it represents bad public policy. As Mr. Brubaker explained:

> **Q SHOULD THE COMMISSION CONSIDER DECOUPLING?**
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> A No. Putting aside the question of whether decoupling would be permitted under current statutes or Commission Rules, the Commission should not entertain decoupling. Guaranteeing a fixed level of revenue for the utility reduces the utility's risk, and shifts the risk to customers. As just one example, suppose that the service territory was affected by a major storm. Today, utilities have every incentive to restore service as quickly as possible, not only to make their reliability metrics look good, but also because it is in their economic best interest to restore service and resume the collection of revenues. Frequently, this involves overtime work and additional compensation, and compensation to other utilities who lend a hand during such times. If the utility's revenues are insulated from such events, to the extent that it collects the same amount of money regardless of how quickly service is restored, there is some economic disincentive to spending the extra money for overtime and third-party assistance because doing so would not affect the level of revenues collected.
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> Also, a decoupling mechanism would make utility rates very volatile. In the event that there was a cool summer, the utility's rates would then be adjusted to compensate it as if the weather had been normal. But, in order to do so, the shortfall would have to be charged back to customers, adding to rate volatility.[11]

For these reasons, and further for the reason that this issue will be addressed in working docket Case No. AW-2015-0282, the Commission should decline to implement decoupling in this case.

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[10] *Id.*, 585 S.W.2d at 58.

[11] Brubaker Surrebuttal, Ex. 1000, p. 8, l. 9 – p. 9, l. 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 13th day of August, 2015, to all parties on the Commission's service list in this case.

/s/ Edward F. Downey