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	**)** **)** **)** **)** **)**	**Case No. EO-2015-0055** **Tariff No. YE-2015-0227**

STAFF'S INITIAL BRIEF

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STAFF'S INITIAL BRIEF

I. Introduction to the Missouri Energy Efficiency Investment Act ("MEEIA") Section 393.1075 RSMo and Background

The MEEIA statute recognizes that every utility earns its profits from the return shareholders receive on investments made by shareholders. The MEEIA statute also recognizes that the utility receives those earnings and covers its costs of business through the sale of energy at retail. All corporations, including rate-regulated utilities have an obligation to maximize shareholder earnings. For a rate-regulated utility, that obligation translates to a business model that relies on selling as much energy as possible, thus covering costs and realizing its authorized earnings. Ameren Missouri as an electrical company is compelled to build new generating capacity as the investment opportunity its shareholders require.

It is often the case that ratepayers will be financially better off - over time - for some ratepayers to reduce the amount of expensive energy they consume. Chiefly, these long term savings come from reductions to the amount of expensive generation capacity the utility will need to provide safe and adequate service to its customers. Under this premise, customers as a whole are considered to be better off financially if all customers (except low-income exempt and opt-out customers) fund demand-side programs that directly benefit only a smaller set of participating

customers. For customers as a whole, it is less expensive to fund demand-side programs than it is for customers to fund the building and operation of new generation capacity. However, Ameren Missouri must earn a return for its shareholders.

While customers have an interest in minimizing required investments, Ameren Missouri has an interest in maximizing its investment opportunities. The MEEIA statute exists because of this tension. Demand-side programs can and do exist outside of MEEIA. MEEIA offers Ameren Missouri an opportunity to maintain and supplement its earnings despite utility-sponsored demand-side programs. In exchange for that opportunity, the MEEIA statute requires that a utility seeking to maintain and supplement its earnings under MEEIA meet certain parameters. This is not an unreasonable bargain, despite Ameren Missouri's protests to the contrary.

For Ameren Missouri to receive (1) real time program cost recovery, (2) a mechanism so that Ameren Missouri is **indifferent** as to whether it sells less energy in a given year because of the energy efficiency programs, and (3) an opportunity for earnings to make up for a reduction to its future supply-side investment opportunity, the MEEIA statute requires that Ameren Missouri offer programs that provide (1) **cost-effective**, (2) **measurable**, and (3) **verifiable** efficiency, and have a goal of achieving **all** cost-effective demand-side savings. The MEEIA statute and the Commission's MEEIA rules are "permissive". Ameren Missouri is free to reject a Commission approved MEEIA program. However, the MEEIA program requested by Ameren Missouri does not match the bargain mandated under the MEEIA statute and is not in compliance with the MEEIA statute for reasons discussed below.

Background

On June 30, 2015, Ameren Missouri and other signatories[1] filed a Non-Unanimous Stipulation And Agreement (hereafter the "Utility Stipulation") in which the signatories proposed terms and conditions modifying Ameren Missouri's 2016 – 2018 Energy Efficiency Plan[2] (the "Cycle 2 Application") filed by Ameren Missouri on December 22, 2014. Ameren Missouri and the other signatories to the Utility Stipulation seek Commission approval of the modified Utility Cycle 2 Plan (hereafter the "Utility Plan") under the MEEIA[3] statute and the Commission's MEEIA rules.[4]

As allowed by rule, the Staff, Office of Public Counsel ("OPC"), Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), and the Sierra Club filed objections to the Utility Stipulation rendering the Utility Stipulation a non-binding joint position of its signatories.[5] Even though it became "non-binding" by rule, the Utility Stipulation's signatories, expecting objection, bound themselves to "…defend the [Utility] Stipulation as a joint position in connection with any contested hearing, briefing or other proceeding."[6]

On July 8, 2015, the Staff, OPC, Renew Missouri, the Missouri Industrial Energy Consumer ("MIEC"), and the Midwest Energy Consumers' Group ("MECG") filed an Amended Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's

[1] Ameren Missouri, Missouri Department of Economic Development – Division of Energy ("DE"), Natural Resources Defense Council ("NRDC"), Kansas City Power and Light Company, KCP&L Greater Missouri Operations Company, and United For Missouri, Inc. ("UFM") filed a Non-Unanimous Stipulation And Agreement on June 30, 2015.
[2] Ex. 100.
[3] MEEIA is the Missouri Energy Efficiency Act, Sect. 393.1075 RSMo.
[4] 4 CSR 240-3.163, 4CSR 240-3.164, 4CSR 240-20.093 and 4 CSR 240-20.094.
[5] Commission rule 4 CSR 240 – 2.115(2)(D).
[6] Utility Stipulation, para. 6.

MEEIA Cycle 2 ("Non-Utility Stipulation"). Sierra Club joined in on July 16, 2015, stating it "…supports the joint position reflected in the Non-Utility Stipulation."[7]

The Non-Utility Stipulation resolved certain issues regarding the Utility Cycle 2 Application and modified its terms (hereafter the "Non-Utility Plan") to bring the Utility Plan into compliance with the MEEIA statute. Ameren Missouri, NRDC, and United For Missouri, Inc. objected to it, rendering the Non-Utility Stipulation a joint position set forth as a non-binding joint position and recommendation of the Non-Utility signatories.

II. Summary of Staff's Position

The Staff recommends that the Utility Plan not be approved by the Commission because it fails to comply with the MEEIA statute, Sect. 393.1075. In addition, the resulting Energy Efficiency Investment Charges to be paid by all ratepayers as a result of the Utility Plan are not "just and reasonable" because the Utility Plan is too costly, avoided costs are too low, and the customer net benefits are too low and too uncertain to ever be realized by non-participants.

Staff supports the terms of the Non-Utility Plan and recommends that the Commission approve those terms as set forth should the Commission decide to grant Ameren Missouri the authority to implement a portfolio of energy efficiency programs and a demand-side investment mechanism ("DSIM") for 2016 - 2018 under the MEEIA statute. Staff supports the Non-Utility Plan because it eliminates any over-recovery problems from the Utility Plan throughput disincentive by requiring evaluation, measurement, and verification ("EM&V") of energy and demand savings.

[7] See Sierra Club's Amended Statement of Position, filed July 16, 2015.

It does this by requiring an audit after the fact to determine actual realized energy and demand savings and actual annual net shared benefits.[8]

Also, the Non-Utility Plan provides Ameren Missouri with a three-pronged Performance Incentive that aligns utility and ratepayer interests by (1) including an incentive for achieving demand savings in kilowatts ("kWs") which more directly affect capacity/supply-side investments, (2) improving program participation rates, and (3) if the Commission so orders, increasing energy efficiency savings in kilowatt-hours ("kWhs") for 2017 and 2018 as a result of improvements in energy efficiency strategies and programs to be determined in 2016 from the implementation of a panel of experts (also referred to as a "Delphi panel"[9]) and a more defined and active stakeholder process than in the Utility Plan.

The Non-Utility Plan is compliant with the MEEIA statute and Staff supports it because it requires that a panel of energy-efficiency experts work together in a collaborative approach to drive improvements in cost-effective demand and energy efficiency savings. The Non-Utility Plan offers the best path forward for Ameren Missouri to achieve MEEIA's goal of all cost-effective demand-side savings which are expected to be beneficial to all customers.

In the event the Commission should reject the Non-Utility Plan, the Staff and OPC recommend the Commission not approve the Utility Plan. OPC witness Dr. Geoff Marke testified that no MEEIA program is preferable to having a program as

[8] 4 CSR 240-20.093(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis.

[9] Ex. 802, Supplemental Direct Testimony of Geoff Marke, p.9; Tr p 738, Ameren Missouri witness Dan Laurent, lns 14-20.

presented by the Utility Plan.[10] Staff witness Sarah Kliethermes agreed, testifying that ratepayers are better off with no MEEIA Cycle 2 plan if the Commission were left to decide between the original Cycle 2 Application or the Utility Plan.[11]

Ameren Missouri and some of the interveners have stated that there must be some form of MEEIA program in place or opportunities for energy efficiency will be lost. Ameren Missouri, Division of Energy, and NRDC posit a false choice -- either approve Ameren Missouri's MEEIA (the Utility Plan), or there will be no energy efficiency in Ameren Missouri's service territory. This is false for many reasons.

- First, naturally occurring energy efficiency will continue, with or without utility sponsored programs.
- Second, utility-sponsored energy efficiency MEEIA programs are simply an opportunity for the utility to (1) recover all investments made for energy efficiency programs; (2) obtain cash for energy that may not be sold under a utility sponsored energy efficiency program; and (3) obtain cash for future supply-side investments that may not be needed because of energy efficiency programs.
- Third, utility-sponsored energy efficiency can occur without MEEIA.
- Fourth, the programs proposed in this MEEIA Cycle 2 (unless modified by the stakeholder and expert panel processes described in paragraphs 2(d) and 3 of the Non-Utility Stipulation) do not represent significant supply-side investment opportunities to be lost.[12]

[10] Tr p 602 ln 21 to p 603 ln 6.
[11] Tr p 806, lns 15-19.
[12] Amended Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2 ("Non-Utility Stipulation"), pp. 4-5.

Finally, rejection of the Utility Plan does not preclude Ameren Missouri from filing another application for a MEEIA program with a more reasonable approach even if Cycle 2 is slightly delayed.

This Brief will address why the Utility Plan is not compliant with the MEEIA statute, why its costs to customers are not "just and reasonable", and why the Commission should approve the terms and conditions of the Non-Utility Plan.

III. Legal Authority for the Non-Utility Stipulation and Non-Utility Plan

The signatories of the Non-Utility Stipulation derive their authority to propose a modified DSIM for approval by the Commission from the Commission's Rule 4 CSR 240-20.093(2)(B) which provides:

> Any party to the application for a utility's filing for demand-side program approval may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM. *Both the utility and the commission retain the authority to approve, accept, or reject any proposed establishment alternative DSIM, continuation, or modification of a DSIM or any proposed alternative DSIM.*

Staff recognizes that Sect. 393.1075 and the Commission's enabling MEEIA rules are "permissive". Ameren Missouri is free to reject Commission-approved MEEIA energy efficiency programs and DSIM as modified. This is why the MEEIA statute and enabling MEEIA rules are often described as "all carrot and no stick" when applied to the utility. The Non-Utility Cycle 2 Plan offers Ameren Missouri plenty of "carrot" for its shareholders while also protecting ratepayer interests.

IV. Legal Standards for Approval of MEEIA Demand-Side Programs and DSIM

The Missouri Energy Efficiency Investment Act, Sect. 393.1075, establishes the state policy to value demand-side investments equal to traditional supply-side investments and delivery infrastructure and sets forth the following standards for approval of energy efficiency programs under MEEIA that are at issue in this case. Staff contends that the Utility Plan fails to meet the following underlined statutory requirements of Sect. 393.1075:

> 3. It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:
>
> (1) Provide timely cost recovery for utilities;
>
> (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
>
> (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.
>
> 4. 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 and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.

The above statutory requirements are also mirrored in Commission Rule 4 CSR 240-20.93(2)(C).

Further, the MEEIA rules give the Commission broad discretion over the factors it may consider when deciding whether to reject, approve or modify a DSIM especially when the DSIM may hugely affect utility earnings and revenues paid for by captive customers.[13]

Finally, all MEEIA program-related costs – including costs of programs, throughput disincentive or lost revenues, and performance incentive awards – are collected from customers in a separate line item which appears on customer bills as an Energy Efficiency Investment Charge ("EEIC"). Like all utility charges approved by the Commission, Sect. 393.130.1 RSMo requires the EEIC be "just and reasonable".[14]

[13] 4 CSR 240-20.093(2)(E) In determining to approve, modify, or continue a DSIM, the commission may consider, but is not limited to only considering, the expected magnitude of the impact of the utility's approved demand-side programs on the utility's costs, revenue, and earnings, the ability of the utility to manage all aspects of the approved demand-side programs, the ability to measure and verify the approved program's impacts, any interaction among the various components of the DSIM that the utility may propose, and the incentives or disincentives provided to the utility as a result of the inclusion or exclusion of cost recovery component, utility lost revenue component in the DSIM. In this context the word "disincentives" means any barrier to the implementation of a DSIM. There is no penalty authorized in this section.

[14] Sect. 393.130.1 states in pertinent part "…All charges made or demanded by any …electrical corporation…for… any service rendered or to be rendered shall be just and reasonable…"

V. The Utility Plan should be rejected (1) because it fails to comply with the MEEIA statute because the programs are too costly, the avoided costs are too low, and benefits are too uncertain to ever be realized by non-participants and (2) because the costs to be paid by captive customers through the Energy Efficiency Investment Charge are not "just and reasonable"

The Utility Plan for 2016-2018 increases the targeted cumulative annual energy savings to 583,563 megawatt-hours ("MWh") from the original Utility Application's cumulative annual energy savings target of 426,382 MWh, amounting to an increase of 37% in targeted energy savings. To achieve this new energy savings target, the Utility Plan increases its budget by nearly 47%. Under the Utility Plan, customers will pay total program costs of $197,209,859.[15]

The $197 million of program costs are only a portion of total costs and do not include the costs of the throughput disincentive and the performance incentive also to be collected from customers as a result of the Utility Plan's energy efficiency programs and the DSIM.[16]

Staff witness John Rogers performed an extensive analysis of benefits and costs to customers that includes costs of the throughput disincentive and the performance incentive expected from implementing the Utility Plan's program portfolio and DSIM.

Mr. Rogers' analysis compares the energy savings, demand savings, costs and benefits for the entire portfolio of residential and business programs for Commission-approved Cycle 1, for the Utility Cycle 2 Application, and for the Utility Plan under the Utility Stipulation.[17]

[15] Ex. 110, Supplemental Testimony of Daniel Laurent, p 2 ln 8 to p 3 ln 5.
[16] Ex. 712, John Rogers Rebuttal to Supplemental Testimony, p 3, lns 4-20.
[17] Ex. 712, Rogers Rebuttal to Supplemental, pp 4 -5 and Sched. JAR-1. Note about Sched. JAR-1: The 'touchstone" to understanding this case is the analysis that compares Cycle 1 to Cycle 2 and to the Utility Stipulation for Cycle 2. All dollars are discounted dollars using Ameren Missouri's weighted average cost of capital of 6.46%.

When factoring in the costs of the throughput disincentive and 100% level performance incentive, the majority of Ameren Missouri customers will likely receive very little, if any, overall net benefits from the programs and the DSIM under the Utility Plan. Consider that 87% of Ameren Missouri's total customers are residential. Staff estimates that customers' net benefits and benefit cost ratios are expected to be:[18]

- $30 million and 1.34, respectively, for residential customers as a whole
- $7 million and 1.06 for residential customer who are not expected to participate directly in efficiency programs, either because:
    - they are not aware of the programs,
    - have no interest in participating,
    - have no need to participate, or,
    - they do not have the financial means to participate in a meaningful way by investing in energy efficiency measures; and,
- $217 million and 5.84 for customers who participate directly in programs.

Staff's analysis estimates that residential customers who are non-participants will pay $112 million with only the expectation that they will receive benefits of $119 million as a result of the Utility Plan energy efficiency programs and DSIM. Thus, the expected net benefits that non-participating residential customers are expected to receive are only

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The "Benefits and Costs Summary" are based on data obtained from Ameren Missouri's filed documents and workpapers except for the Utility Stipulation column for throughput disincentive or the 100% level performance incentive amounts. Staff estimated these amounts for Cycle 2 and the Utility Stipulation modified Cycle 2 by factoring up or down based on the relative "deemed" energy savings targets.

[18] Ex. 712, Rogers Rebuttal to Supplemental, p 7.

worth an estimated $7million with a slim benefit cost ratio of only 1.06.[19] In comparison to Cycle 1, Mr. Rogers testified "*There's no question that the avoided cost in the marketplace is significantly less than it was expected to be. The end result is that the benefits to customers are much less than they were expected to be.*"[20]

Customers bear all the risk. Whether non-participating customers will ever realize the $7 million of net benefits is uncertain at best. Under the Utility Plan the benefits occur over the expected life of each energy efficiency measure (up to 20 years) and are based on "deemed" energy and demand savings assumed in the Utility Plan. At the same time, customers pay all the program costs "contemporaneously" in years 1, 2, and 3 of the Utility Plan.

Ameren Missouri will collect from customers in the same three years a throughput disincentive valued at $60 million under the Utility Plan with no retrospective true-up or EM&V audit. The "deemed" values for each efficiency measure act as a static baseline for determining annual energy and demand savings and are based on "deemed" annual energy savings, "deemed" annual demand savings and "deemed" avoided costs[21] for each measure. Customers have no guarantee of receiving a return of net benefits from these measures.[22]

Without retrospective EM&V to true-up the energy and demand savings that actually occurred, the "deeming" of savings for each installed efficiency measure

[19] Ex. 712, Rogers Rebuttal to Supplemental, pp 6 – 7 (internal cite to Page 2 of Ameren Missouri's 2014 Annual Report and Sched. JAR-1.
[20] Tr p 793 ln 15 – p 794 ln 5.
[21] 4 CSR 240-20.093(1)(F) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs.

[22] Ex. 712, pp.8 - 9.

protects Ameren Missouri by shifting all risk of whether or not those savings benefits ever occur to Ameren Missouri customers during a 20 year period.[23] Under the Utility Plan, Ameren Missouri collects its program costs and a share of net savings benefits from its throughput disincentive and any earned performance incentive award all upfront in the first 6 years.[24]

As discussed above and shown below, the differences between the Cycle 1, the Utility Cycle 2 Application and the Utility Stipulation (Utility Plan) are substantial and do not favor customers – especially the majority of residential customers that do not participate in MEEIA programs . Staff witness John Rogers testified at hearing: "*Given the portfolio programs that are being recommended and the analysis performed by Ameren Missouri, we have a Cycle 2 portfolio that is significantly lower in terms of projected energy and demand savings than we have for Cycle 1. I didn't perform that analysis. The Company did.*"[25] Adding to the company analysis, below is a part of Mr. Rogers' analysis of customers' benefits and costs expected from Cycle 1, Utility Cycle 2 Applications and the Utility Stipulation (Utility Plan) that shows the Utility Stipulation's adverse impact on non-participants in comparison to Cycle 1:[26]

[23] Tr p 794 ln 6 –p 795 ln 9.
[24] Tr p 794 ln 18 – p 795 ln 24.
[25] Tr p 748 ln 24 to p 749 ln 4.
[26] Ex. 712, Rogers Rebuttal to Supplemental Testimony, Sched. JAR-1 (millions of discounted dollars at Ameren Missouri's weighted average cost of capital).

Non-Participanting Customers	Portfolio			Residential			Business		
	Cycle 1	Cycle 2	Utility Stipulation	Cycle 1	Cycle 2	Utility Stipulation	Cycle 1	Cycle 2	Utility Stipulation
Energy Savings (GWh)	793	426	584	505	166	224	288	261	360
Demand Savings (MW)	170	114	123	99	36	56	71	78	68
Expected Benefits	$ 499	$ 261	$ 350	$ 307	$ 89	$ 119	$ 192	$ 172	$ 231
Customers' Costs	$ 248	$ 189	$ 269	$ 149	$ 74	$ 112	$ 99	$ 115	$ 157
Customers' Net Benefits	$ 251	$ 72	$ 82	$ 158	$ 15	$ 7	$ 93	$ 57	$ 75
Benefits / Costs	2.01	1.38	1.31	2.07	1.20	1.06	1.93	1.50	1.48

A. The Utility Plan fails to comply with the MEEIA statute, Section 393.1075, and Section 393.130.1 and should be rejected by the Commission

The Utility Plan fails to comply with the MEEIA statute for these reasons:

- Because the Utility Plan throughput disincentive (referred to as "TD-NSB")[27] collects a share of annual net shared benefits valued at $60 million, Ameren Missouri could be using its throughput disincentive mechanism as an improper "earnings opportunity" not contemplated by MEEIA. Because the throughput disincentive is derived solely from "deemed" energy and demand savings values and is not trued-up through retrospective EM&V, the Utility Plan may create a significant "earnings opportunity", similar to that in Cycle 1. Sect. 393.2075.3(3) requires that earnings opportunities be associated with cost-effective measurable and verifiable efficiency savings.
- Ameren Missouri's throughput disincentive mechanism ("TD-NSB") "…incents the utility to pursue programs that are deemed to have high

[27] The throughput disincentive under the Utility Plan is termed the TD-NSB or "Throughput Disincentive-Net Shared Benefits" and can be an earnings opportunity because it takes a fixed 27.68% of net shared benefits "NSB" for its Tier 1 which is based on a 15 month rate case timing interval. Utility Plan Tier 2 trues-up rate case timing before the NSB sharing percentage is calculated.

values in energy efficiency relative to the energy efficiency they will cause… ", and creates an improper incentive.[28]

- As discussed further below, Ameren Missouri's earnings opportunity through its performance incentive, is solely based on achieving energy savings (kWhs) through programs with a high level of "deemed" energy efficiency savings and a low level of persistent supply-side resource impact, meaning low persistent Kw impact…".[29] This earnings opportunity performance incentive is not aligned with the customers' incentive to use energy more efficiently in a manner that "…sustains or enhances utility customers' incentives to use energy more efficiently…"
- The energy and demand savings resulting from the Utility Plan are not "…beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers." 87% of all Ameren Missouri's customers are residential. Most residential customers do not participate in demand-side energy-efficiency programs, but all residential customers must pay monthly for these costly programs in their Energy Efficiency Investment Charge. Non-participating customers will pay $112 million in hard dollars to Ameren Missouri during the first 6 years starting in the first year of the three-year program cycle. In return, Ameren Missouri gives them an expectation that they will receive $119 million of net savings benefits over a 20 year period of time based upon

[28] Tr p 805, Staff witness Sarah Kliethermes.
[29] Tr p 806, Staff witness Sarah Kliethermes, lns 3-10.

"deemed" energy and demand savings and "deemed" avoided cost estimates. The expectation that these "deemed benefits" will occur for customers over the next 20 years is unrealistic because such an expectation rests on assumptions made today and cannot reasonably be anticipated to hold true for 20 years. Thus, the Utility Plan is not expected to be beneficial to all customers in the customer class and therefore does not comply with MEEIA Sect. 393.1075.4.

- The Utility Plan's Combined Heat and Power ("CHP) measures give no consideration to whether the end-use consumption of electricity on the customer's side of the electric meter is reduced or modified and fails to comply with the MEEIA statute and Commission rules.[30] For a CHP application to comply with the MEEIA rules, only the difference between the actual electrical consumption on the customer side of the meter before and after the installation of a CHP system could be considered subject to the Commission's demand-side program filing requirements.[31]
- Ameren Missouri screened its proposed CHP measure in its market potential study and its 2014 Chapter 22 triennial compliance filing (Case No. EO-2015-0084) and determined CHP not to be cost effective. Ameren Missouri witness Rick Voytas states "*As table 4-3*

[30] Ex. 711, Supplemental Direct Testimony of John Rogers, p 12. Sections393.1075.2(3) and 4 CSR 240-20.093(1)(L) define a demand-side program as "…any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load. Section 393.1075.2(4) and 4 CSR 240-20.093(1)(U) define energy efficiency as "measures that reduce the amount of electricity required to achieve a given end use." 4 CSR-20.093(1)(K) defines demand response as "…measures that decrease peak demand or shift demand to off-peak periods." (discussed on pp 10-11).

[31] 4 CSR 240-3.164.

shows, CHP is not cost effective for MEEIA 2016-2018. Relatively minor amounts of potential become cost effective in 2025."[32]

The Utility Plan simply incurs too much cost with too few and too uncertain benefits to reach the threshold of a "just and reasonable" charge to Ameren Missouri customers.

B. <u>The Non-Utility Plan complies with the MEEIA statute, Section 393.1075 and Section 393.130.1 and should be approved by the Commission</u>

The Non-Utility Plan includes the program portfolio in the original Utility Cycle 2 Application and adds two new programs: a Multifamily Low Income ("MFLI") and a Small Business Direct Install program at a cost of $10.75 million and $9.9 million respectively.[33]

All programs in the Non-Utility Plan portfolio are considered to be cost-effective because each program has a total resource cost ("TRC") value greater than 1.00 except for the MFLI program which has a TRC value of 0.96. Any demand-side program or portfolio with a TRC greater than 1.00 is considered to be cost effective because expected benefits are greater than expected costs. The MFLI program is not required to have a TRC greater than 1.0 because it is a program targeted to low-income customers and does not need to meet a cost-effectiveness test as long as the Commission makes the

[32] Ex. 711, Supplemental Direct Testimony of John Rogers, p 11 *citing to* Ex. 112, Surrebuttal Testimony of Richard Voytas, p 81, lns 12-13.

[33] Ex. 711, Supplemental Direct Testimony of John Rogers, Sched. JAR-1 "July 7, 2015 Non-Utility Non-Unanimous Stipulation and Agreement Portfolio". Ex. 711 Sched. JAR-1 contains the same information as "Appendix A" of the July 8, 2015 Non-Utility Stipulation with one exception: it includes Total Resource Cost ("TRC") values for Ameren Missouri's direct-filed Cycle 2 Plan on December 22, 2014 and TRC values for the Utility Cycle 2 Plan filed on June 30, 2015.

determination that the MFLI program is in the public interest as required by Sect. 393.1075.4 RSMo. [34]

Staff concludes that the Non-Utility Plan portfolio TRC is near 1.50 based on a comparison of the available TRC values for Ameren Missouri's December 22, 2014 direct-filed Utility Cycle 2 Application and the Utility Plan filed June 30, 2015.[35]

By themselves the Non-Utility Plan programs and annual energy and demand savings do not meet the MEEIA goal of "all cost-effective" demand-side savings that will provide benefits to all customers. However, the Staff supports the Non-Utility Plan because it provides the following process and means to move toward the MEEIA goal of achieving all cost-effective demand-side savings:

- An expert panel ("Delphi panel") convened by a mediator or facilitator to improve program participation rates;
- A process guided by the expert panel including Ameren Missouri and interested stakeholders to identify additional cost-effective energy savings strategies which, if implemented, can result in a portfolio that demonstrates progress toward achieving MEEIA's goal of "all cost-effective" demand-side savings and is beneficial to all customers; and,

[34] Ex. 711, Supplemental Direct of John Rogers, pp 2 – 3.
[35] Ex. 711, Supplemental Direct of John Rogers, pp 2 – 3. Staff is unable to directly calculate the Non-Utility Plan portfolio TRC because this calculation can only be performed with the DSMore model and the input files for each program which is in the possession of Ameren Missouri. Staff did not request such an analysis be performed because it is not essential.

- The Non-Utility Plan's DSIM, specifically through the earnings opportunities provided by its performance incentive mechanism, incents Ameren Missouri to actively participate and engage in the expert panel process, to improve participation rates and to improve lasting kW demand savings.

If the Commission approves the Non-Utility Plan and Ameren Missouri agrees to implement it, Staff contends that the Non-Utility Plan's program portfolio and the incentives built into its DSIM will improve the programs, their participation rates, and the overall benefits for all customers. The Non-Utility Plan makes great strides toward addressing Staff's concern that a MEEIA portfolio of programs provides benefits for all customers consistent with the MEEIA statute.[36]

Just as important, the Non-Utility Plan aligns the incentives between Ameren Missouri and its customers as called for under MEEIA. As in supply-side investments there exists a balance of risk between Ameren Missouri and its customers in the Non-Utility Plan. Customers are encouraged to participate in energy efficiency programs and will pay Ameren Missouri for actual – not "deemed" – energy efficiency and demand savings achieved from demand-side programs. Ameren Missouri will recover its program costs and its throughput disincentive as those savings are achieved subject to the Non-Utility Plan's DSIM which provides the framework for an earnings opportunity based on lasting energy efficiency and demand savings.

[36] Ex. 711, Supplemental Direct of John Rogers, pp 3 - 4.

VI. Throughput Disincentive Mechanism

Electric utilities make money by selling energy. Consequently, a utility has a natural disincentive to promote energy efficiency programs which would reduce its sales. This is known as a throughput disincentive.[37] To combat this disincentive, demand-side programs investment mechanisms ("DSIM") have typically included some sort of mechanism to compensate utilities for the lost sales that result from the MEEIA programs in place.[38] In Ameren's MEEIA Cycle 1, parties stipulated to deeming the annual energy and demand savings and annual net shared benefits ("NSB") that Ameren would recover using a throughput disincentive-net shared benefits ("TD-NSB") mechanism.[39] Staff notes that from looking at that mechanism after the fact, it is clear that Ameren Missouri benefitted significantly from deeming the savings and benefits rather than using evaluation, measurement, and verification (EM&V) to determine the actual energy and demand savings and actual annual NSB amounts.[40] Further, upon closer examination, the Cycle 1 mechanism does not make the utility financially indifferent as to any reduction in energy sales due to program measures installed as a result of MEEIA. As a result, Staff recommends a new mechanism for Cycle 2.

Staff recommends the Commission adopt the proposal for the throughput disincentive mechanism as set forth in the Non-Utility Plan as being fair, just, and reasonable, as well as supported by the evidence in the record. Under the terms of the Non-Utility Plan, the inclusion of revenue recovery for a throughput disincentive

[37] Ex 703 Sarah Kliethermes Rebuttal to Supplemental Testimony, p.2.
[38] 4 CSR 240-20.093(1)(M)(4) states that the DSIM may include recovery of lost revenues; 4 CSR 240-20.093(2)(G)(3) states that there is no requirement for a lost revenue component of a DSIM; 4 CSR 240-20.093(2)(G)(4) states that lost revenues may be addressed with a performance incentive mechanism.
[39] EO-2012-0142; Ex. 709 Corrected Rebuttal Testimony of John Rogers, p. 31.
[40] Ex. 709 Corrected Rebuttal Testimony of John Rogers, p. 31-32; Ex. 800 Rebuttal Testimony of Geoff Marke, p. 7; Ex. 801 Surrebuttal Testimony of Geoff Marke, p. 13.

mechanism is designed to make the utility financially indifferent as to any reduction in energy sales due to program measures installed as a result of MEEIA. As more fully described in the Non-Utility Plan, Ameren Missouri will bill 66.67% of the unrealized revenue value each month, and the value of those recoveries will be immediately recognized as revenues for the Company. The throughput disincentive mechanism shall be subject to a true-up process to determine the actual impact on forecasted values, with possible upward adjustments made to future billings for any "under recovery," up to a cap of 133.33% per each measure installed. [41]

A. Accounting Concerns Surrounding the Non-Utility Plan's NTD Proposal

The Signatories to the Non-Utility Plan have stipulated to a method of calculating the net throughput disincentive ("NTD") that permits Ameren Missouri to "deem," or fully recognize, two-thirds of the unrealized revenue value, with potential recovery of additional revenues following the determination of realized kWh savings, up to a cap of 133.33%.[42] Further, the Signatories to the Non-Utility Plan have stated that an alternative approach would also be acceptable which would allow Ameren Missouri to recover 100% of its estimated throughput disincentive amount through the MEEIA Rider EEIC, with recovery of additional amounts up to a cap of 133.33% of the forecasted value possible, as well as subsequent refund to customers down to a floor of 67.67% of the forecasted value, both based upon a bilateral true-up process.[43]

[41] During the hearing, it appears that some parties were confused and understood that recovery of the throughput disincentive was capped at 133.33% of the total projected dollar value for the portfolio, regardless of whether more measures were installed than had been projected initially. This is not the case.
[42] *See* Amended Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2, filed EFIS July 8, 2015, p. 8.
[43] *Id.* at p. 7-8 (footnote 5).

Ameren Missouri's primary argument in this case against the throughput disincentive structure in the Non-Utility Plan is that its application would allegedly result in earnings losses to the Company, due to certain accounting consequences. However, it is striking that in this proceeding, Ameren Missouri has failed to offer any independent evidence of any kind, including citations to accounting literature or to the actions of regulatory bodies in other jurisdictions, to support its claims of adverse accounting consequences if, in fact, a retrospective true-up is ordered for its NTD collections. Ameren Missouri's claims of accounting harm are based solely upon the representations of Ms. Lynn Barnes, its Controller, and Mr. Clifford Hoffman, its hired witness.

The provisions of the Non-Utility Plan asking that a retrospective true-up of the forecasted values be used to determine Ameren Missouri's initial NTD recovery are in no way unreasonable. A true-up of resulting revenues is a common tool used with forecasted values, usage, or other variable factors that are utilized when establishing required revenue.[44] A true-up considers factors occurring subsequent to the period under review, through a specific date, in order to reconcile differences in account values and to correct line item values with present actual values.

Ameren Missouri's citations to the opinions of its external auditor ("PwC") and other accounting firms in alleged support of its accounting contentions were entirely hearsay in nature.[45] The primary foundation of Ameren Missouri's position on this issue is the unsupported assertions of Ameren Missouri's witnesses, Ms. Barnes and Mr. Hoffman, regarding the applicability of ASC 905-605-25(1)-(4) to the question of

[44] *See* Black's Law Dictionary on line at http://thelawdictionary.org/true-up/.
[45] *See* Ex. 101, L. Barnes Surrebuttal, p. 17, Tr p 862, lns 22-26.

when NTD revenue can be recognized. [46] Staff witness Mark L. Oligschlaeger states that, in his professional opinion, the provisions of ASC 905-605-25 are intended to govern when a utility can currently book revenues due to an expectation that it will receive cash from customers in the future to compensate it for lost revenues as a result of DSM programs. However, Ameren Missouri claims that these accounting provisions go further than addressing the probability of receiving revenue streams in the future, and in fact would prevent a utility under most circumstances from recognizing revenues for NTD recovery even after the amounts have been billed to customers and collected.[47]

Staff asserts that the plain wording of ASC 980-605-25 does not support in any way Ameren Missouri's strained and expansive interpretation of this accounting language. However, the Commission does not have to rely solely in this case on a determination of which party's interpretation of this arcane accounting principle language is correct. To resolve this issue appropriately, Staff encourages the Commission to examine the supporting evidence or lack of evidence marshalled by each side in support of its interpretation.

Ms. Barnes stated in testimony and under cross-examination that Ameren Missouri's external auditor, PwC, fully supported Ameren Missouri's interpretation of ASC 980-605-25. However, Ameren Missouri did not offer the testimony of any representative of PwC in this proceeding, or any documentation from PwC in support of this hearsay allegation.

Further, there has been no evidence presented by Ameren Missouri in this case that other regulatory jurisdictions have even been presented with this accounting

[46] *See* Tri p 866 lns 6-14.
[47] Ex. 707, Mark Oligschlaeger Rebuttal to Supplemental Testimony, pp. 3-4.

interpretation, much less adopted it. In this regard, Ms. Barnes testified that she did little or no research into the actions of other public utility commissions ("PUCs") regarding this accounting issue[48]. Mr. Hoffman also could not cite to any utility that raised the same or identical accounting issues as those alleged by Ameren to exist in this case. As Ameren's hired "outside expert," he would presumably be aware of any such precedent.[49]

Ameren Missouri's failure to cite precedent from other public utility commission proceedings in support of its allegations is very telling in that proposals to apply true-up procedures to NTD rate recoveries are not rare or unprecedented. Mr. Wolff for the Sierra Club, who testifies in regulatory matters nationally, testified that all of the throughput disincentive mechanisms he was familiar with featured retrospective true-ups of lost revenue amounts recovered.[50] Also, Mr. Oligschlaeger testified that he performed a comprehensive review of prior orders in jurisdictions where true-up mechanisms were ordered in the context of NTD recovery. [51] He found no evidence that Ameren Missouri's alleged accounting issues were raised or considered in any of those instances.[52]

Irrespective of the accounting considerations, the Commission should reject Ameren Missouri's position against retrospective true-up of NTD collections. The appropriateness of a retrospective review of the throughput disincentive to be collected does not and should not depend upon the content of the accounting policies

[48] Tr pp 484:494.
[49] Tr p 197.
[50] Tr pp 399-400.
[51] See Appendix C, *State Electric Efficiency Regulatory Frameworks,"* to the 2016-18 Energy Efficiency Plan filed by Ameren Missouri in Case No..EO-2015-0055 on December 22, 2014.
[52] *See* Ex 707, M. Oligschlaeger Rebuttal to Supplemental Testimony, p 5; Trpp 847-848.

applicable to these recoveries. Reasonable ratemaking policies should be enacted that appropriately balance the interests of utility customers and shareholders, and utilities should be charged with employing approved accounting methodologies to accurately record the financial results of those policies. It is entirely inappropriate to select otherwise unreasonable ratemaking approaches for a utility based upon the accounting consequences of those approaches. To authorize the "deeming" of an assumed present-value of throughput disincentive would be unreasonable, as that would improperly shift risk associated with the Company's MEEIA programs from the utility to its customers. For that reason, it is Staff's position that reasonable true-up procedures should be applied to Ameren Missouri's MEEIA throughput disincentive rate collections based upon those forecasted values, in order to properly balance the interests of the Company and its customers, regardless of the accounting consequences of that approach.[53]

Ameren Missouri has utterly failed to support its contentions regarding the alleged negative accounting consequences of authorizing throughput disincentive true-ups. This failure has two likely explanations which are not mutually exclusive. First, Staff believes that no such evidence exists. Second, based upon Ameren Missouri's oft-cited ability to cease offering MEEIA programs if the regulatory terms under which such offerings can be made are not to its satisfaction, the Company may not believe it is necessary to offer evidence on this issue to back up the threats to halt its MEEIA programs. Staff encourages the Commission not to peremptorily respond to Ameren Missouri's threats in this proceeding by granting it rate treatment for MEEIA financial impacts that would not otherwise be reasonable, i.e., allow it to recover

[53] Ex 706, M. Oligschlaeger Supplemental Direct, pp 5-6.

projected throughput disincentive amounts in rates without a meaningful true-up procedure.[54]

If the Commission is inclined to give any weight whatsoever to Ameren Missouri's threats to walk away from MEEIA programs if its position is rejected, even in the absence of supporting evidence for its accounting doom saying, it is Staff's strong recommendation that the Commission should order Ameren Missouri to provide supplemental evidence. Prior to approving a Utility Plan that is not compliant with the the MEEIA statute and rules, the Commission should at least require Ameren Missouri to produce supplemental evidence from both accounting literature and the actions of other public utilities and public utility commissions to verify that the accounting restrictions Ameren Missouri claims would apply to it under the Non-Utility Plan are, in fact, applicable to other utilities in the same general circumstances currently facing the Company, and that these standards have been applied across the utility industry in a consistent manner.[55]

B. <u>Non-Utility Plan Proposed Net Throughput Disincentive</u>

The Non-Utility Plan includes a Net Throughput Disincentive ("NTD") mechanism that removes disincentives for Ameren Missouri's promotion of demand side management ("DSM") programs and provides proper incentives to Ameren Missouri for promoting successful DSM programs. In contrast, Ameren Missouri's proposal does nothing to overcome the current incentive Ameren Missouri has to sell more energy and its disincentive to promote energy efficiency with high "deemed" savings and low

[54] 4 CSR 240-20(2)(G)(5) states, "Any explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery." Ameren Missouri's proposal would violate this rule and therefore should not be approved.

[55] Ex. 707 Mark Oligschlaeger Rebuttal to Supplemental Testimony, p. 6.

realized savings. Without the modifications found in the Non-Utility Plan, the Utility Plan's reliance on deemed efficiency savings, deemed avoided costs, and deemed net avoided sales revenue still provides a perverse incentive against effective energy efficiency in that it incents Ameren Missouri to pursue programs with high deemed savings, low actual energy savings, and low or no actual demand savings as required under MEEIA.[56] Under the Utility Plan Ameren Missouri is still incented to sell as much energy as possible and to install measures with a poor ratio of projected energy savings to actual energy savings under its proposal.[57]

The Non-Utility Plan sets up an interrelated framework of programs, disincentive removal, and incentive creation that supports the MEEIA statutory policy objective to "value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs."[58] Under the Non-Utility Plan, if Ameren Missouri develops and promotes programs that provide cost-effective, measurable and verifiable efficiency savings, Ameren Missouri would receive a host of benefits to include:

1. Contemporaneous program cost recovery on:

    a. A base level of programs,

    b. Targeted low-income programs that may not be cost effective, and

    c. Analysis and implementation of additional programs as a result of the expert (Delphi) panel during the course of the cycle which provide some added level of benefit to all customers over the planning horizon.

[56] Ex. 703, Sarah Kliethermes Rebuttal to Supplemental Testimony, p. 3, lines 6-17.
[57] *Id.* at p. 5-6.
[58] RSMo §393.1075.3

2. A mechanism to change Ameren Missouri's throughput disincentive in a manner that makes Ameren Missouri financially indifferent to whether or not it promotes DSM programs.

3. A mechanism to incent Ameren Missouri with an earnings opportunity to promote DSM programs through:

a. A base level of earnings opportunity associated with annual energy savings targets, if approved by the Commission,

b. An incentive targeted to improve participation among multi-family low income customers, and

c. An incentive to achieve energy demand savings that meaningfully reduce future capacity requirements through provision of a reasonable earnings opportunity as a result of demand reductions.[59]

This NTD mechanism is more generous to Ameren Missouri than the mechanism provided in 4 CSR 240-20.093 (1) (Y), the Commission's Lost Revenue Rule, because it allows Ameren Missouri to forego showing a reduction in sales prior to receiving an opportunity to collect revenues in a throughput disincentive, and to collect throughput disincentive recovery regardless of whether Ameren Missouri's overall total utility sales are decreasing or increasing.[60] Staff supports the waiver of this rule requirement in the spirit of compromise, recognizing the arguments of other diverse parties, and under good cause to achieve the successful MEEIA Cycle 2 outlined in the Non-Utility Plan.[61]

[59] Ex. 702 Sarah Kliethermes Corrected Supplemental Direct Testimony, p. 2, lines 8-22; Amended Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2.
[60] Ex 702 Sarah Kliethermes Corrected Supplemental Direct Testimony, p. 2-3.
[61] Ex 702 Sarah Kliethermes Corrected Supplemental Direct Testimony, p. 3.

While both plans filed in this case request a waiver of Chapter 20, the Non-Utility Plan requires only a limited waiver. It would provide Ameren Missouri throughput disincentive recovery regardless of whether its overall utility sales are up or down.[62] Staff recommends the Commission adopt the NTD proposed in the Non-Utility Plan, as it requires measurement and verification of the magnitude and causation of realized kWh savings but still relies on a quantification of the net reduction in utility retail revenue that is not subject to further adjustment by the application of an NSB share calculation.[63]

1. The Non-Utility Plan trues up the NTD and makes Ameren Missouri financially indifferent as to whether or not it promotes DSM programs

The Non-Utility Plan values the throughput disincentive as the applicable monthly margin rate, minus the applicable seasonal avoided cost rate, multiplied by the number of kWh expected to not be sold because of the measure.[64] In other words, the Non-Utility Plan NTD works by allowing Ameren Missouri to bill and retain the unrealized revenue caused by its MEEIA Cycle 2 DSM programs.[65] Each month, Ameren Missouri will be entitled to either 66.67% or 100% of the revenues associated with the unbilled kWh for that month. An unbilled kWh is a kWh that an Ameren Missouri customer did not buy from Ameren Missouri, because that customer participated in an Ameren Missouri MEEIA Cycle 2 program to reduce his or her energy usage. The dollar value of each unbilled kWh depends on customer class, season, and the level of energy that the customer otherwise consumes that month.[66] The unrealized

[62] Ex. 702 Sarah Kliethermes Corrected Supplemental Direct Testimony, p. 2-3.
[63] See VII.D.1. Ameren Missouri's Net Shared Benefit Approach.
[64] Ex. 703 Sarah Kliethermes Rebuttal to Supplemental Testimony, p. 15. This initial quantification will be based on estimates available to the utility at the time. Later true-up of the number of kWh sales actually avoided will be addressed through the true-up process.
[65] Ex. 702 Sarah Kliethermes Supplemental Direct Testimony, p. 3.
[66] *Id.*

revenue is the revenue that Ameren Missouri did not receive from the sales of energy it did not sell because of MEEIA Cycle 2, minus the costs that Ameren Missouri avoided incurring because it did not have to procure or produce that energy.[67] Ameren Missouri's avoided costs include the cost of obtaining energy for that customer through the MISO integrated energy market, as well as the cost of transmission and ancillary services associated with that energy. Reductions in customer load also translate to reduction in Ameren Missouri's share of MISO administrative charges, capacity requirements, and transmission build-out expense.[68]

The dollar values booked will later be trued-up after it is determined how many unbilled kWh actually occurred that month, based on the actual effectiveness of the measures that have been installed as determined by Evaluation, Measurement, and Verification ("EM&V"), up to a cap of 133.33% of the forecasted value. This true-up also makes Net to Gross ("NTG") adjustments.[69] This approach results in Ameren Missouri being financially indifferent to whether or not it promotes DSM programs.[70] In contrast, Ameren Missouri's proposal does not create an environment where Ameren Missouri is financially indifferent. It also speculatively structures a TD-NSB as a share of future net benefits that may or may not ever materialize.[71]

2. <u>The Utility Plan relies on assumptions and deemed values and thus fails to protect customers from overpaying for lost revenue</u>

Ameren Missouri's proposal is a house of cards, based on assumptions that if slightly disturbed, would bring the entire proposal crashing down. The Utility Plan

[67] *Id.*
[68] *Id.*
[69] *Id.* at p. 4.
[70] *Id.* at p. 2.
[71] *Id.*

proposes a reliance on deeming, which relies on a belief that all assumptions that were made to develop the estimate are ultimately accurate, to calculate the present value of the throughput disincentive. Ameren Missouri's accelerated recovery method is the only thing necessitating so many assumptions. While both approaches allow Ameren Missouri to collect revenues through its Rider EEIC based on projections,[72] under Ameren Missouri's accelerated method as soon as a measure is installed Ameren Missouri books all of the revenue that is assumed to be unbilled until the next anticipated rate case.[73] In reality, each month, Ameren Missouri only incurs a revenue reduction for the kWh it did not sell that month.[74] Because of this accelerated valuation, Ameren Missouri must make extra assumptions including rate case timing, future case outcomes, level of revenue collected through the fixed customer charge, future fuel expense, future transportation expense, future purchased power expense, future transmission expense, and future revenue levels from off-system sales. All of these assumptions must be made and must be correct for Ameren Missouri's proposal to work,[75] but Ameren Missouri's Utility Plan fails to verify many of these assumptions through a true-up and even limits that sparse amount of true-up done in a manner that only serves to benefit shareholders.[76] In contrast, the Non-Utility Plan avoids assumptions about rate case timing, future case outcomes, level of revenue collected through the fixed customer charge, future fuel expense, future transportation expense,

[72] Ameren Missouri collects the revenue starting on the day its Rider EEIC is adjusted for Cycle 2, based on projections of the level of measure installations expected.
[73] Ex. 703 Sarah Kliethermes Rebuttal to Supplemental Testimony, p. 12.
[74] *Id.*
[75] Ex. 702 Sarah Kliethermes Corrected Supplemental Direct, p. 4.
[76] *Id.* at p. 17.

future purchased power expense, future transmission expense, and future revenue levels from off-system sales.

Ameren Missouri's proposal relies on assumed installation, assumed performance, deemed savings, deemed performance, and deemed throughput disincentives. This reliance on assumptions and deemed values, as opposed to actual or verified values, allows Ameren Missouri to receive money based on the measure, regardless of whether that measure works or not. This creates a large incentive for Ameren Missouri to offer measures with high deemed savings, and low realized savings, since Ameren Missouri absolutely recovers the higher amount of deemed savings but is not forced to recognize a similar realized decrease in energy sold due to realized savings.

3. <u>Utility Plan Structure of TD-NSB as an Incentive</u>

Ameren Missouri requested that the Commission authorize its throughput disincentive mechanism to perform as an additional performance incentive that creates an earnings opportunity which accelerates the recovery of pre-deemed projections of energy efficiency savings through a complex NSB mechanism.[77] Putting accelerated recovery into the context of a rate case shows how ludicrous Ameren Missouri's proposal is; if this method was used in setting rates, each customer would pay a one-time bill of approximately $1,617 after each rate case, for energy not yet used, indefinitely into the future.[78] The Non-Utility Plan NTD removes accelerated recovery of deemed energy and demand savings, providing for recovery of the throughput

[77] Ex. 702, Sarah Kliethermes Corrected Supplemental Direct Testimony, p. 4, lines 14-19.
[78] Ex. 703 Sarah Kliethermes Rebuttal to Supplemental Testimony, p. 7.

disincentive as savings occur, and it safeguards customers by trueing-up actual realized energy and demand savings.

A concern with Ameren Missouri's decision to structure its throughput disincentive as an incentive relates to mixing and matching net shared benefits and throughput disincentive calculations with actual implementation. Ameren Missouri set up its TD-NSB as a percentage of portfolio net benefits, but Ameren Missouri alone has the final say in what programs are implemented, and what costs are incurred. A change as simple as finding a cheaper vendor to implement a measure than what Ameren Missouri assumed the program costs would be at the time it studied the program can result in a significant change to the level of throughput disincentive dollars that Ameren Missouri receives. Under Ameren Missouri's requested TD-NSB mechanism, even if the exact same kWh were actually saved as the kWh that were assumed to be saved when Ameren Missouri studied the measure, Ameren Missouri would receive a greater level of TD-NSB revenues for those same kWh. Two examples on the following pages help illustrate this concern:

Throughput Disincentive Recovery as a Percentage of "Net Shared Benefit" At the Program Level

	As Studied	As Implemented
Program Cost:	$ 500	$ 450
Program Benefit:	$ 750	$ 750
Net Benefit:	$ 250	$ 300
kWh savings:	1,000	1,000
TD incurred on kWh savings:	$ 50	$ 50
TD percent of NSB:	20%	20%
TD-NSB Recovery	$ 50	$ 60
Difference Between TD incurred and TD recovered:	$ -	$ 10.00

In this example, Ameren Missouri studied a program with a cost of $500, and benefits of $750. It expects this program to save 1,000 kWh, which translates to about $50 of revenue that Ameren Missouri won't receive because it is selling 1,000 kWh less energy. That $50 of revenue is 20% of the $250 net benefits, so the TD-NSB recovery on this example would be 20%. However, if Ameren Missouri finds a vendor who can sell the measure 10% cheaper than what was studied, the program costs drop to $450. Because the program costs as incurred are less in this example, the net-shared-benefits rise from $250 to $300, and Ameren Missouri will now receive TD-NSB recovery at $60, even though by its own calculation, it only missed out on $50 of rate revenue for those same 1,000 kWh of savings.

This problem is magnified by the fact that the TD-NSB share percentage is determined at the portfolio level.

Throughput Disincentive Recovery as a Percentage of "Net Shared Benefit" At the Portfolio Level

	Program A	Program B	Program A	Program B
	As Proposed		As Implemented	
Program Cost:	$ 500	$ 600	$ 750	$ 300
Program Benefit:	$ 750	$ 750	$ 1,125	$ 325
Net Benefit:	$ 250	$ 150	$ 375	$ 75
Cost-Benefit Ratio:	1.50	1.25	1.50	1.25
kWh savings:	1,000	1,000	1,500	500
TD incurred on kWh savings:	$ 50	$ 50	$ 75	$ 25
Program TD percent of NSB:	20%	33%	20%	33%
Portfolio TD percent of NSB:	25%		25%	
TD-NSB Recovery:	$ 100.00		$ 112.50	
Difference Between TD incurred and TD recovered:	$ -		$ 12.50	

In this example, Ameren Missouri has two programs. One is more cost effective than the other, but they each achieve benefits of $750; one for a cost of $500, the other for a cost of $600. Like in the last example, each program is expected to save 1,000 kWh, which translates to about $50 for each program of revenue that Ameren Missouri won't receive because it is selling 1,000 kWh less energy. Under this example, Ameren Missouri will receive $100 of throughput disincentive total. That $100 of revenue is equivalent to 25% of the $400 net benefits (the total of the two programs net benefits, so the TD-NSB recovery on this example would be 25%.) Program A has a better cost to benefit ratio than Program B, and Ameren Missouri is free to emphasize Program A over Program B. If Ameren decides to double the installations of Program A and halve the installations of Program B, it can. Unfortunately for ratepayers, since the shareholders' share of net benefits

(i.e. the TD-NSB level) was determined based on the portfolio as proposed, even though the total kWh is 2,000 both as studied and as implemented, Ameren will get an extra 12.5%. Under Ameren Missouri's requested TD-NSB mechanism, even though the exact same kWh were actually saved as the kWh that were assumed to be saved when Ameren Missouri studied the measure, Ameren Missouri would receive a greater level of TD-NSB revenues for those same kWh.

VII. Performance Incentive

A. The Performance Incentive is key to MEEIA as an incentive to utilities to implement demand-side programs; however, it must be properly earned. This earnings opportunity is an answer to lost investment opportunities resulting from significant demand-side savings such that supply-side investments are postponed or unnecessary. Ameren Missouri's proposed performance incentives are improper methods of creating windfalls to the utility, while creating risk for the ratepayers. The Non-Utility Stipulation proposal is a correct method of providing levels of earnings to the utility for appropriate demand-side, participation and energy savings, while protecting ratepayers from overcompensating Ameren Missouri shareholders.

B. General Overview of an Earnings Opportunity or "Performance Incentive"

Section 393.1075.3(3), RSMo, states that in support of MEEIA policy,[79] the Commission shall "[p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings." This subsection interrelates with several other concepts within the MEEIA statute. First, it acknowledges that if demand-side program costs are expensed[80] as permitted under the statute, then shareholders will not

[79] Section 393.1075.3, RSMo, "It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs…."

[80] "Expensed" is defined as an offset or reimbursement for charges. If Ameren Missouri is reimbursed, dollar for dollar, for all program costs as MEEIA requires, then the utility is not making actual investments into programs.

have a demand-side investment opportunity.[81] Second, Sect. 393.1075.3(3) implicitly acknowledges that if demand-side programs reduce the need for future supply-side investments, shareholders will have less supply-side investment opportunities at some point in the future.[82] If shareholders cannot earn a return on today's demand-side investments because no shareholder dollars are invested under Ameren Missouri's program design, and because shareholders will miss out on some level of future supply-side investment opportunity if Ameren Missouri's programs perform as designed, Sect. 393.1075.3(3) gives Ameren Missouri's shareholders an earnings opportunity to compensate for foregone supply-side investment opportunity.

Throughout this proceeding the MEEIA earnings opportunity has been referred to by the term "performance incentive." [83] The phrase "performance incentive" evokes an idea that Ameren Missouri is entitled to an "incentive" for any "performance" relating to achieved energy efficiency savings. However, the sole purpose of a "performance incentive" under the MEEIA statute is to provide the company with an earnings opportunity to place shareholders in a financial position comparable to the earnings opportunity they would have had available had those shareholders made a future supply-side investment, which would equally value supply-side and demand-side investments.[84] Important to note is that a future supply-side investment earnings opportunity is only foregone if Ameren Missouri no longer needs to make a supply-side

[81] Section 393.1075.3(1), RSMo, directs the Commission to "Provide timely cost recovery for utilities," while Section 393.7075.5 states, in pertinent part, "To comply with this section the commission may develop cost recovery mechanisms to further encourage investments in demand-side programs including, in combination and without limitation: capitalization of investments in and expenditures for demand-side programs…."
[82] *See* Section 393.1075.4, RSMo.
[83] See Ex 103, Barnes Rebuttal to Non-Utility Stipulation Testimony p. 13, ln. 5-10; and Tr. 21:500 ln. 11-18.
[84] See Section 393.1075.3, RSMo.

investment due to a measured and verified reduction in the utility's load as a result of the energy efficiency measures installed under MEEIA.

The earnings opportunity may be based on different performance measures, as evidenced by the variances in the proposed performance incentives of the Utility and Non-Utility stipulations. The chief example of those variances is whether the energy savings occur in any hour throughout the year (kWh–based), or at times that are considered in supply-side planning (kW-based). Ameren Missouri bases its proposal on kilowatt hour savings, which looks at the total number of kWh of energy saved following the implementation of an energy efficiency measure. Staff agrees that reducing the annual sales of kWh can offer benefits to ratepayers, however, not all kWh have equal impact on either the short-term benefits or detriments flowing back to rate payers through the fuel adjustment clause, or the long term benefits that may or may not be experienced through reduction in future supply-side capacity requirements. Utility capacity requirements are driven chiefly by the maximum amount of usage in a single hour during the year, known as "peak demand."[85] Even if thousands of kWh were saved, if the summer peak demands are the same with and without a MEEIA Cycle 2, then Ameren Missouri would likely require the same capacity and therefore would not forego a future supply-side investment opportunity.[86]

Alternatively, demand savings resulting from energy efficiency measures are used to calculate the performance incentive in the Non-Utility Stipulation. If an electric utility successfully reduces its future capacity requirements by reducing customer electricity usage, it may be able to avoid or postpone installation of additional costly generation

[85] The goal of efficient system planning should be to efficiently serve load over time, but peak demand is a commonly used metric for this calculation.

capacity. Those demand savings reflect actual reduction in investments necessary for the utility to meet its peak demand requirements, which reduce future revenue requirements paid by customers, and future earnings opportunities made available to investors. Use of demand (kW) savings as the performance measure to estimate ongoing supply-side impacts provides shareholders with the same or better earnings opportunity than the shareholders would experience in the absence of MEEIA Cycle 2.

Based on several *ex parte* filings made since the evidentiary hearing, there appears to be much confusion as to whether Staff and the other signatories to the Non-Utility Stipulation are proposing that Ameren Missouri be required to amend its Cycle 2 programs so that incentives under those programs are paid out based on kW savings. The concerns expressed in these *ex parte* filings are unfounded; the Non-Utility Stipulation does not propose that programs be redesigned to pay incentives to customers on the basis of demand savings. Addressing a related concern, an earnings opportunity as outlined by the MEEIA statute should only be paid to the utility if the utility's promotion of energy efficiency programs reduces the utility's future supply-side investment opportunities. The Non-Utility Stipulation does not discourage cost-effective energy efficiency programs that do not reduce peak demand; [87] it simply does not provide compensation to Ameren Missouri for foregone earnings opportunities if those earnings opportunities are not actually foregone.

[87] Ameren Missouri receives real-time program cost recovery and net throughput disincentive recovery on all programs under both stipulations, regardless of whether or not a given program meaningfully impacts supply-side investment opportunities.

C. A MEEIA-caused reduction in supply-side investment opportunities is a prerequisite for an award of a MEEIA Earnings Opportunity or "Performance Incentive."

Subsection 3 of the MEEIA statute,[88] outlines the foundation of cost recovery and an earnings opportunity for a utility engaged in a MEEIA program. Section 393.1075.3(3) states the Commission shall, "[p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings." Commission Rule 240-20.093 expands on the statute and explains how energy and demand savings targets should be applied, but does not use the phrase "performance incentive" in describing the earnings opportunity.[89] In fact, the only time the actual phrase "performance incentive" is used in the Commission rules is once at subsection 240-20.093(G)(4).[90] MEEIA litigation over time has warped the concept of a performance incentive's purpose: to provide for actual lost earnings.

MEEIA provides that "[i]t shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs."[91] In furtherance of this policy, the MEEIA statute and all programs to date have allowed the utility to recover program costs as incurred. In Ameren Missouri's MEEIA program, all program costs are recovered contemporaneously or expensed, so the shareholders do not make an actual "demand-side investment" in terms of capital investment.[92] Because no shareholder dollars are invested in demand-side programs, an earnings opportunity under MEEIA in

[88] Section 393.1075(3), RSMo.
[89] 4 CSR 240-20.093(2)(H).
[90] 4 CSR 240-20.093(2)(G)(4).
[91] Section 393.1075.3. RSMo.
[92] Tr. 22:832.

the Non-Utility Stipulation is necessarily limited to an opportunity to receive earnings in lieu of an investment opportunity shareholders will forego if a demand-side program performs in such a way that their future supply-side investment opportunities are reduced. In the Cycle 2 Application Ameren Missouri explained that investing in supply-side resources was the way utilities' grow their earnings and their businesses.[93] Ameren Missouri went on to say that in order to replicate the growth of earnings and business, such that demand and supply-side could be viewed equally, demand-side resources must offer a return competitive with supply-side options.[94] Staff agrees and in fact, notes that the cornerstone of the MEEIA statue is the principal that a demand-side program can reduce future revenue requirements by reducing a need for supply-side resources. To incent the utility, the MEEIA statute offers shareholders an earnings opportunity in place of a forgone supply-side investment opportunity.[95]

Significant demand-side impacts are necessary to completely avoid a future supply-side investment in a large generation facility. For example, unless Ameren Missouri's Utility Plan results in energy and demand reductions such that construction of a power plant would be cancelled or materially postponed, the shareholders will not have experienced a foregone supply-side earnings opportunity.

D. <u>The Utility Plan's Performance Incentive Design is one-sided and unreasonable.</u>

In the Utility Plan, Ameren Missouri has improved its direct-requested performance incentive mechanism to include some level of EM&V calculations and to be completed

[93] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule*, p. 39.
[94] *Id*.
[95] Tr. 22:832-833.

at the end of each of the three years of Cycle 2.[96] Nominally, the Utility Plan set the performance incentive at a flat rate of $30 million upon reaching 100% of target *energy* savings, but that valuation is subject to distortion under the design of Ameren Missouri's net shared benefits (NSB) approach. Ameren Missouri's performance incentive as designed would provide shareholders with a MEEIA earnings opportunity without requiring shareholders to forego any supply-side investment opportunity. As explained further below, Ameren Missouri's performance incentive as designed would subject the earnings opportunity to significant distortion by factors that are entirely within the utility's discretion. Due to a reliance on solely energy savings and utilization of the NSB approach there is a substantial risk of windfalls to shareholders.

An additional concern stems from Ameren Missouri's Integrated Resource Plan filed in October 2014 that analyzed what alternative resources looked like at the Realistic Achievable Potential (RAP) level with and without energy efficiency programs in place.[97] From that IRP, Ameren Missouri determined that its lost earnings or earnings annuity would be $23.3 million.[98] However, Ameren used a 20 year planning horizon to reach these results despite the fact that MEEIA cycles are established for three year terms with Cycle 2 running from January 2016 through December 2018. During cross-examination, Ameren Missouri witness William Davis answered questions about Ameren Missouri's IRP Analysis included in its *Energy Plan*.[99] Most notably, Davis was asked if, "the analysis which produced the $23.3 million of a pre-tax earnings annuity is based on the relative impact of a RAP portfolio being delivered to customers

[96] *Non-Unanimous Stipulation and Agreement*, filed June 30, 2015.
[97] *Integrated Resource Plan and Risk Analysis for Ameren Missouri's 2014 IRP,* filed in Case No. EO-2015-0084, p. 40-41
[98] *Id*.
[99] *2016-18 Energy Efficiency Plan: December 22, 2014,* p. 40-42.

over a 20-year planning horizon," to which he answered **yes**.[100] Davis also admitted, "**I doubt it**," when questioned whether Ameren's earnings would be the same if earnings were calculated only for the three years of Cycle 2 and not the hypothetical future cycles.[101] He confessed that earnings would **probably** be only a small fraction of the projected annuity according to Ameren Missouri's study.[102] The original earnings opportunity proposed in Ameren Missouri's *Energy Plan* focused on that annuity and the supply-side savings projected over those 20 years.[103] The proposal allows the utility to recover a percentage of net shared benefits based on amounts that, according to Ameren's own witness, would be different if calculated for the actual term of Cycle 2.[104]

1. <u>Ameren Missouri's Net Shared Benefit Approach</u>

Under Ameren Missouri's NSB approach, that $23.3 million calculated dollar value is converted to approximately 28.4% of the currently-estimated net benefits. That total amount of currently-estimated net benefits is determined by subtracting the assumed program costs over the three year cycle from the assumed costs that will be avoided by the implementation of those programs. The calculation of currently-estimated net benefits requires assumptions about the program costs of each program, and the breakdown of the total MEEIA portfolio by program. The calculation of currently-estimated net benefits also requires assumptions about which programs will be implemented to a given extent at a given point throughout the MEEIA cycle, and thus what costs will be avoided.

[100] Tr. 21:365-366.
[101] Tr. 21:367.
[102] *Id*.
[103] *2016-18 Energy Efficiency Plan: December 22, 2014,* p. 39-45.
[104] Tr. 21:367.

After obtaining portfolio approval, Ameren Missouri has a great deal of discretion as to which programs are implemented to a greater or lesser extent under its MEEIA programs. Staff is hopeful both that program costs will be less than were assumed, because that would reduce customers' MEEIA charges while maintaining the same benefit and that Ameren Missouri implements programs that have the best cost-to-benefit ratios, because that would increase the benefits while maintaining the same costs. However, neither of those factors should ultimately change the payout Ameren Missouri receives for hitting a given percentage of its target savings.[105]

Under both the Non-Utility and Utility Plans, customers pay shareholders dollar for dollar immediately upon completion of MEEIA Cycle 2 programs.[106] Thus, under the proposals of both plans customers provide the earnings opportunity to shareholders prior to the hypothetical point in the future when supply-side investments would be postponed or cancelled and bear all risk that the supply-side investment will even occur. Thus the customers are saddled with the dangers of benefits that do not materialize, and shareholders receiving double-recovery from the earnings opportunity and the supply-side investment opportunity. However, under the Non-Utility Plan, customers do not bear that unnecessary risk that a change in program implementation

[105] Similarly, an increase in program costs as implemented from the program costs as assumed should not reduce shareholder's earnings opportunities. While Staff does not recommend that the bulk of the performance incentive be based on kWh targets that do not directly relate to future supply-side earnings opportunity, it is similarly unreasonable that a change in the cost-effectiveness of a portfolio as a whole would impact the level of payout at a given percent of the achievement of target savings.

[106] Under the Non-Utility Stipulation, the demand-related performance incentive payment is the product of the kW of demand-related impact, times the applicable dollar value. Tier 1 consists of $37/kW up to 834,000 kW. To reasonably estimate the value of a kW of supply-side capacity, Staff relied on the recent experience of the change of retirement date used for depreciation purposes of the Meramec coal-fired generation plant. This is reasonable as a first tier of demand-related savings, as Ameren Missouri is not expecting to achieve enough demand-related savings to avoid building a new combined cycle plant over its planning horizon. Tier 2 consists of $250/kW up to an additional 166,000kW.

may decrease the impact to supply-side investment opportunities and simultaneously increase the upfront earnings payment to shareholders.

At the hearing, Chairman Kenney asked how the performance incentive proposed in the Utility Stipulation (Utility Plan) for Cycle 2 differed from that approved in Cycle 1. The truth is that the structure of the earnings opportunity is not that different. The trouble is that the structure of the earnings opportunity does not benefit from lessons learned in Cycle 1.[107] Under the NSB approach, whatever hard dollar values were calculated based on Ameren Missouri's proposed estimates during the Cycle 2 application and approval process are subject to distortion at best, as the programs implemented vary from the programs proposed, in terms of cost and the percentage of the total portfolio that each program constitutes.

In support of the Utility Plan Ameren Missouri argues that the increase in its requested performance incentive from the *Application* is directly related to the increase in its targeted energy savings.[108] One thing all of the parties have agreed on is that the savings targets in the initial *Application* were low[109], and some parties to the Utility Plan still appear to have some reservations about the new targets. Division of Energy witness Martin Hyman noted, "I was in agreement that those savings targets were too low. And I think what we saw, even though it was a compromise with this … this moved closer to the statutory goals" [as to the Utility Stipulation].[110] While Mr. Hyman appears only

[107] For example, Office of the Public Counsel (OPC) attorney Tim Opitz noted in his opening argument at the evidentiary hearing that the performance incentive approved in Cycle 1 is presently, "full of controversy," noting that Staff presently has a complaint against Ameren Missouri regarding the earnings opportunity and that OPC has raised disputes as to the realized energy savings and attributed benefits." Tr. 20:91.
[108] *Application to Approve DSIM Filing, Request for Variances and Motion to Adopt Procedural Schedule*, p. 11.
[109] Division of Energy witness Martin Hyman comments, "Alex Shroeder expressed his concerns prior to leaving for the Federal Energy Regulatory Commission with how the savings were too low … in exchange for what the Company was asking for its TDNSB and performance incentives." Tr. 21:570-571
[110] Tr. 21:570-571.

uncertain in the present targets, Sierra Club witness Tim Woolf in contrast commented, "They're literally moving down lower and lower levels when, in fact, the technical potential study should be seen as a rough guideline as to what might be out there."[111]

Ameren Missouri witness William Davis testified that, "relying on net benefits provides meaningful incentive to encourage the Company to implement programs in the most cost-effective manner."[112] Staff disagrees with this statement. For a simple example, assume Ameren Missouri has studied a demand-side program with an estimate cost of $500, and currently-estimated benefits of $750. This means that the program has a cost-benefit ratio of 1.25, and net benefits of $250. Assuming the program is expected to create 1,000 kWh of energy savings, and that Ameren Missouri's performance incentive is based on an earnings opportunity of $0.025/kWh, under this scenario Ameren Missouri's NSB share for its performance incentive would be 10% of NSB.

Program Cost:	$	500
Program Benefit:	$	750
Net Benefit:	$	250
kWh savings:		1,000
PI at 100% of kWh target:	$	25
PI percent of NSB:		10%
PI-NSB Recovery	$	25
PI recovered minus PI assumed:	$	-

Now, assume that when Ameren Missouri goes to implement the program, it is able to find a vendor to provide the same product for 10% less cost than had been assumed.

[111] Tr. 21:407.
[112] Davis Rebuttal to Non-Utility Stipulation Testimony p. 10

This is ostensibly good for customers and of no impact to Ameren Missouri because program costs are directly recovered through the Rider EEIC. Unfortunately, under this scenario, the apparent benefit to customers and neutral outcome to Ameren Missouri shareholders will not occur. Instead, while Ameren Missouri's customers will pay 10% less in program costs, those customers will also be required to fund a 20% increase to Ameren Missouri's performance incentive payout. In turn, Ameren Missouri will receive a windfall 10% increase to its performance incentive payout.

	As Studied	As Implemented
Program Cost:	$ 500	**$ 450**
Program Benefit:	$ 750	**$ 750**
Net Benefit:	$ 250	**$ 300**
kWh savings:	1,000	**1,000**
PI at 100% of kWh target:	$ 25	**$ 25**
PI percent of NSB:	10%	**10%**
PI-NSB Recovery	$ 25	**$ 30**
PI recovered minus PI assumed:	$ -	**$ 5.00**
PI overrecovery:		**20%**

On its face, this result may not seem unreasonable for a *performance incentive*. However, it is vital to recall that what the MEEIA statute contemplates is an earnings opportunity provided to shareholders who have foregone a future supply side investment. An increase or decrease in program costs does not have any impact on the return possible for a future supply-side investment. It is not reasonable to link the

MEEIA statutory earnings opportunity to this unrelated metric in the manner requested by Ameren Missouri and described in the Utility Stipulation.[113]

2. Ameren Missouri's kWh-based Approach

As discussed above, the performance incentive is based on the statute's directive that shareholders should receive an earnings opportunity to compensate shareholders for a reduction in supply-side investment opportunities that may be caused by demand-side programs. While it is possible to have a MEEIA portfolio that is cost-effective for all ratepayers in compliance with the statute that does not meaningfully reduce supply-side investment opportunities, it would not be reasonable to provide a significant earnings opportunity in conjunction with such a portfolio. The Non-Utility Plan does include provisions for Ameren Missouri to obtain a significant earnings opportunity, but only to the extent that its MEEIA portfolio reduces Ameren Missouri's supply-side investment opportunities.

Staff has additional concerns with Ameren Missouri's kWh-based performance incentive design. Specifically, this kWh-based approach would assume the same supply-side impact from a kWh saved under a nighttime lighting program as from a kWh saved under an air-conditioner recycling program, which is on its face unreasonable. The distortions possible under this assumption would result in customers providing Ameren Missouri with a MEEIA earnings opportunity (under the guise of reducing future supply-side investment opportunities) without Ameren Missouri actually reducing any

[113] With all due candor, this kWh-based Net Shared Benefit approach was used in Cycle 1. Staff has learned from Cycle 1. Under Chapter 22 supply-side plans are compared using no new demand-side resources and using RAP-level demand-side resources over the 20-year resource planning horizon. As we learned through MEEIA Cycle 1, the programs as implemented varied greatly from the programs as proposed. For example, Ameren Missouri relied much more heavily on CFL bulbs to meet the energy savings target than was assumed in initially estimating Net Share Benefits. .

future supply-side investment opportunities. This is not a matter of Ameren Missouri's ability to predict the future; this is a matter of building in a double-recovery windfall for the utility and should not be permitted.

The "performance incentive" created in the Utility Plan incents Ameren Missouri to promote programs with as many kWh savings as possible, and as few kW savings as possible. While Staff admits that kWh savings are a positive accomplishment, not all kWh are created equal. If the kWh that are saved as a result of MEEIA Cycle 2 occur during a season and at a time of day when few kWh are utilized anyway, then Ameren Missouri will still need to make supply-side investments such as peak capacity plants to meet demand for its peak usage periods such as the middle of the summer at 5 p.m. when everyone returns home.[114] Troublingly, on the stand Ameren Missouri witness Hande Berk made the statement that, "MEEIA is about energy efficiency savings and not demand savings." However, she admits that the utility's Chapter 22 is designed to show peak demand savings as a result of the energy efficiency savings, something that is presently lacking in MEEIA Cycle 2 as proposed and contemplated in the Utility Plan.

[114] In her opening statement, Ameren Missouri attorney Wendy Tatro stated, "No more lighting programs." Her likely intent was to cause a sense of shock and concern at the thought of energy efficiency programs without lighting, but actually the thought is not horrific at all. The benefits derived from the Utility Stipulation's CFL lighting program in particular are expected to have virtually no impact on future supply-side investment opportunities. In fact, Ameren Missouri witness Richard Voytas in his Surrebuttal testimony originally noted that, "CFLs are not cost-effective for Ameren Missouri for MEEIA 2016-2018." While CFL lighting programs are expected to produce some level of energy savings, shifting consumer installation of CFL bulbs one year sooner, as Ameren Missouri is attempting to do with the lighting program proposed in the Utility Stipulation, will not prevent the need for a plant to be built in 2025. As regards the LED lighting programs found under both stipulations, Staff understands from the Company's modeling that the program is expected to be cost effective, and Staff encourages the company to pursue this cost effective program. However, Staff cannot recommend that it is reasonable to award the utility a "performance incentive" for kWh not sold under this program, except to the extent that those kWh coincide with system peak. In other words, Staff recommends that the DSIM provide an earnings opportunity for foregone supply-side investment opportunities, but cannot recommend it as reasonable that the Commission provide Ameren Missouri with ratepayer dollars for simply letting a customer-funded program run its course while receiving a throughput disincentive payout on avoided sales.

Pursuant to 4 CSR 240-22.010(2)(B), an electric utility is charged with, "minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan."[115] However, the MEEIA portfolio as-implemented is not required to conform to that preferred resource plan under Chapter 22 planning. Staff is not demanding that Ameren Missouri be held to implementation of the RAP portfolio as studied in Ameren Missouri's Chapter 22 filing, but because Ameren Missouri has severed the relationship between the kWh savings studied in its Chapter 22 filing under its RAP portfolio and the kWh savings that will be experienced under its programs as implemented, use of kWh savings to estimate ongoing supply-side impact as described in the Utility Stipulation is not reasonable.

In short, all parties acknowledge that Ameren Missouri can and should have the flexibility to respond to changes in experienced program costs and program effectiveness. Where the stipulations differ is that under the Utility Plan Ameren Missouri is incented to reap disproportionate benefits from differences in program costs and benefits as estimated today, and program costs and benefits as implement under Ameren Missouri's discretion. The Non-Utility Plan compensates Ameren Missouri for the risk of a change in circumstances, but does not protect ratepayers from the risk of financing a utility windfall.[116]

E. The Non-Utility Plan Performance Incentive provides a reasonable earnings opportunity.

The Non-Utility Plan offers a potentially greater earnings opportunity than that offered under the Utility Plan. The Non-Utility Plan's proposed earnings opportunity (or

[115] 4 CSR 240-22.010(2)(B).
[116] Under both stipulations, ratepayers bear the risk that the estimated impact to future supply-side investment opportunities does not materialize.

performance incentive) focuses on long-term demand savings to fully compensate the utility, but also provides additional earnings opportunities to increase customer participation[117] and accomplish energy savings.

As proposed, the programs that comprise MEEIA Cycle 2 will not achieve meaningful supply-side impact. The Non-Utility Plan addresses this shortcoming by allowing Ameren Missouri to revise its portfolio to create the opportunity to earn an earnings opportunity. While supply-side investment opportunities will only be impacted through substantial demand-side reductions, the earnings opportunity included in the Non-Utility Plan does not require Ameren Missouri to accomplish RAP level savings or the elimination of a power plant to achieve payout.

The demand component is set up as a two tiered system, which includes energy savings past 121,100 kW for Tier 1 up to the second tier, and past 834,000 kW for Tier 2 up to 1 million kW.[118] This focus on the impact on future capacity requirements provides lasting benefits to the ratepayers and the environment resulting from avoided or delayed investments in supply-side infrastructure.[119] In this way Ameren Missouri receives an earnings opportunity to better align its incentives with those of the ratepayers, and the ratepayers see a better chance of benefits into the future.

While demand is the focus of the Non-Utility Plan savings, the parties appreciate the value of increased participation in MEEIA programs, especially by low income individuals who are hard to reach with traditional energy efficiency programs. Due to this a second element was added to the proposed earnings opportunity or performance incentive in the Non-Utility Plan. If Ameren Missouri spends its entire budget set aside

[117] Specifically hard to reach customers, such as low-income.
[118] Tr. 20:73-74.
[119] Tr. 20:73.

for Multi Family Low Income ratepayers, then it will receive an additional amount as a bonus to the existing performance incentive structure. The Multi Family Low Income program benefits individuals by directing funds toward installing more energy efficient measures and improving the infrastructure to promote efficiency in existing multi-family buildings, which house low income residents.

Finally, the Non-Utility Plan also makes a provision for energy savings beyond the demand savings requirement. As there has been controversy among the parties about the true level of energy savings attainable by Ameren Missouri in MEEIA Cycle 2, the Non-Utility Plan proposes reliance on a method called a Delphi Panel to determine this final element of performance incentive. A Delphi Panel consists of experts chosen by the utility who would come together to discuss potential sources of energy savings for the utility in this MEEIA Cycle 2. The panel would be facilitated by someone who would gather the expert recommendations and draft a final recommendation based on all of the experts' input. Note that Ameren Missouri witnesses Ingrid Rohmund and Richard Voytas both mentioned the use of Delphi Panels in their testimony.[120] The use of demand-side programs today to reduce the need for supply-side resources tomorrow - with the related revenue requirements and environmental impact - is a complicated matter with uncertain outcomes. The Non-Utility Plan seeks to make the best of this situation and create an actual "win-win" situation for Ameren Missouri and its ratepayers that all parties can agree to. The utility's earnings opportunity resulting from this uncertain MEEIA Cycle 2 should not be based on kWh savings, and other factors that do not directly relate to the earnings opportunity that shareholders should receive in lieu of a future supply-side investment opportunity. Instead, the performance incentive

[120] *See* Ex. 111, Rohmund Surrebuttal p. 19; Ex. 112, Voytas Surrebuttal p. 41, 51.

should be based on demand savings, which reasonably relate to the potential to produce long term supply-side impact. The Commission only needs to decide whether it would rather offer Ameren Missouri an opportunity to artificially increase its earnings on a program portfolio with little benefits to ratepayers, or to observe the MEEIA statute and allow the utility to retain earnings stability while reducing the cost to serve its customers going forward through avoiding costly supply-side investments.

VIII. Conclusion

The Utility Plan's proposal fails on multiple levels. It does not align shareholder interest and customer interest as statutorily required. In fact, the Utility Plan's proposal creates an incentive for Ameren Missouri to offer ineffective programs with high deemed energy efficiency, but without realized achieved energy efficiency. If the programs do not work as designed, it is to the customer's detriment, but Ameren Missouri still benefits. In doing so, Ameren Missouri shifts risk onto customers but audaciously asks for the Commission to surrender any opportunity for the Commission, Staff, OPC, or any other interested party to review whether or not those programs work. Ameren Missouri projects benefits that are very low for ratepayers, while their costs are very high.[121] Shareholders are getting paid cash, up front, for their share of the benefits, while ratepayers do not get the benefit of the bargain expected under the statute, and ratepayers are responsible for the share of benefits that Ameren Missouri receives even if customer benefits never materialize.[122]

Again, Staff requests that the Commission adopt the *Non-Utility Plan* because it presents a fair and reasonable resolution to the issue of the lost revenue recovery.

[121] Ex. 703 Sarah Kliethermes Rebuttal to Supplemental Testimony, p. 1.
[122] *Id.* at 2.

This resolution is balanced both in terms of incentivizing the Company and ensuring that consumers are not bearing more of the cost of the programs that is warranted under the statute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 13th day of August, 2015, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Robert S. Berlin