

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

In the Matter of Union Electric Company )  
d/b/a Ameren Missouri’s 4th Filing to )  
Implement Regulatory Changes in )  
Furtherance of Energy Efficiency as )  
Allowed by MEEIA )

Case No. EO-2023-0136

**STATEMENT OF POSITIONS**

Comes now the Office of the Public Counsel (the “OPC”) and submits this Statement of Positions:

**Overview**

The Commission should wholly reject Union Electric Company d/b/a Ameren Missouri’s (“Ameren”) Amended and Supplemented Application to Approve DSIM and Demand-Side Management Portfolio and Plan, and Request for Variances (the “Amended Application”). As explained throughout the Direct, Rebuttal, and Surrebuttal Testimony of the OPC’s witnesses—Dr. Geoff Marke, Ms. Lena Mantle, and Mr. Jordan Seaver—with its Amended Application Ameren requests approval of overly rich programs that will result in a large number of free riders and that come at unnecessarily high costs to its ratepayers with few to no verifiable benefits. Ameren makes this request at a time when its ratepayers already face significantly higher costs due to its required and requested generation buildout. (*See, e.g.*, Marke Direct Test. 7-8; Marke Rebuttal Test. 38-39; Marke Surrebuttal Test. 32-37). Ameren’s Amended Application fails to account for the promotion of energy efficiency that exists in the market today<sup>1</sup> and that is and will

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<sup>1</sup> This includes items such as (1) building energy codes and standards, including those that exist in St. Louis County and the City of St. Louis (Marke Direct Test. 41-43); (2) standards for products, such as those established for lightbulbs in the Energy Independence and Security Act (“EISA”) (Kiesling Direct Test. 2); and (3) the Commission’s allowance for aggregators of retail choice (“ARCs”) to participate in Missouri (Marke Direct Test. 29-33; Marke Rebuttal Test. 4-9).

be promoted through other programs.<sup>2</sup> (*See generally* Marke Rebuttal Test.). Customers can take advantage of this changed market and utilize these other programs without paying the high attendant costs that accompany a MEEIA program—namely the throughput disincentive and the earnings opportunity. (*See, e.g., id.* 38-39). Ameren’s Amended Application also negates much of the progress achieved over the previous extension years of its third MEEIA cycle. (*Id.*). For all of these reasons, those addressed below, and those addressed in the OPC’s witnesses’ testimonies, the OPC requests that the Commission deny Ameren’s Amended Application.<sup>3</sup>

**1. Benefits: Is Ameren Missouri’s demand-side plan, as proposed, expected to provide benefits to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers as required by § 393.1075.4 RSMo.?**

No, Ameren’s proposed MEEIA Cycle 4 plan, as proposed in the Amended Application, should not be expected to meet the statutory requirement that the programs “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.” § 393.1075.4 RSMo.

Initially, it should be noted that in determining whether its proposed programs are cost effective, Ameren excludes two large amounts from the equation: (1) the throughput disincentive and (2) the earnings opportunity. (Marke Rebuttal Test. 36 (estimating the Earnings Opportunity at approximately \$70.25 million and the throughput disincentive at greater than \$84 million)). Ameren excludes these amounts even though its ratepayers will pay both through the MEEIA surcharge. (*Id.*). This should cause the Commission great pause as it considers Ameren’s cost-benefit analyses in the Amended Application. (*See id.*).

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<sup>2</sup> Perhaps the best example of a program supporting energy efficiency is the federal Inflation Reduction Act (“IRA”), which includes both generous tax incentives and direct rebates for energy efficiency upgrades. (Marke Direct Test. 22-27). Similarly, the Low-Income Weatherization Assistance Program (“LIWAP”) provides additional assistance for some customers. (*Id.* 26-27). Additional State programs also exist, including the low-interest loan program offered by the Missouri Department of Natural Resources. (Kiesling Direct Test. 2-4).

<sup>3</sup> In the event the Commission wishes to allow Ameren to have a MEEIA portfolio, the OPC requests that the Commission include the modifications discussed throughout its witnesses’ testimonies and in this Statement of Positions. Alternatively, the OPC requests that the Commission consider the proposal for a MEEIA portfolio put forward by Dr. Marke in his Surrebuttal Testimony. (*See* Marke Surrebuttal Test. 53-54). Finally, even if the Commission determines that Ameren should offer MEEIA programs, the OPC requests that the Commission make clear that the utilities should move toward a statewide MEEIA program. (*Id.* 54).

Further, Ameren's proposed MEEIA Cycle 4 consists of many programs for which alternatives exist, which do not require large capital investment from Ameren's ratepayers. (*See, e.g., id.* 24-25 (discussing the similarities between Ameren's single-family income-eligible program and the LIWAP, which is administered by community action agencies)). Even where Ameren's ratepayers must bear some costs associated with these alternatives, they do not require those ratepayers to pay the significant costs associated with a throughput disincentive, an earnings opportunity, or unreasonably high administrative overhead. (*See id.*). These duplicative programs will result in a high number of free riders who will participate in Ameren's proposed programs solely to achieve additional rewards, without inducing any additional energy efficiency upgrades. (*See, e.g., Marke Direct Test.* 27).

Further, as explained in the Rebuttal Testimony of Ms. Lena Mantle and the Direct Testimony of Mr. J Luebbert, Ameren has failed to account for the distribution of benefits that will occur through its fuel adjustment clause ("FAC"). (*See generally* Mantle Rebuttal Test.; Luebbert Direct Test.). Ms. Mantle points out the importance of analyzing the market price of energy at the time that it is saved. (*See generally* Mantle Rebuttal Test.). She concludes that if Ameren's MEEIA programs induce savings at a time when the market price of energy is below the average price used in setting the FAC base factor it will result in a detriment to non-participants through a higher FAC rate. (*Id.* 26-27). This is in direct contravention of the MEEIA statute. § 393.1075.4 RSMo. (requiring that programs be "beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.").

Similarly, as explained in the Surrebuttal Testimony of Mr. Jordan Seaver and the Rebuttal Testimony of Mr. Brad Fortson, Ameren is unlikely to defer the buildout of any generation with its proposed suite of MEEIA Programs. (*See generally* Seaver Surrebuttal Test.; Fortson Rebuttal Test.).

Importantly, when analyzing whether benefits exist from Ameren's MEEIA programs, the Commission should not be distracted by the discussions of non-energy benefits ("NEBs"). (Marke Surrebuttal Test. 17-24). The argument for recognition of NEBs "is largely a marketing concern and if adopted in any manner as justification for MEEIA will only result in wasted money, time, and fewer quantifiable savings." (*Id.* 17). In the rulemaking process for the revised MEEIA rules, the Commission limited its consideration of NEBs by adopting a change to the rules such that NEBs are only considered in the Total Resource Cost ("TRC") test "if they are quantifiable and result in avoided electric utility costs." (*Id.* 23 (quoting Final Order of Rulemaking, Case No. EX-2016-0334, Response to Comment #27, p. 13)). In accordance with its prior decision, the Commission should reject Ameren's and NRDC's reliance on NEBs to support the Amended Application. (*Id.* 23).

For at least these reasons, Ameren’s proposed MEEIA Cycle 4 should not be expected to provide benefits “to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers,” as required by § 393.1075.4 RSMo.

**A. Are the avoided cost assumptions in Ameren’s MEEIA Cycle 4 Amended Application reasonable estimations of ratepayer benefits of avoided energy and demand?**

No. As explained in the Rebuttal Testimonies of Ms. Lange and Mr. Luebbert, the avoided cost assumptions in Ameren’s MEEIA Cycle 4 Amended Application are not reasonable estimations of ratepayer benefits of avoided energy and demand. (*See* Lange Rebuttal Test. 25-42; Luebbert Rebuttal Test. 15-29).

**i. If not, how should avoided costs be determined?**

Avoided costs should be calculated in accordance with the processes outlined in Mr. Luebbert’s Direct Testimony. (Luebbert Direct Test. 4-10). This includes separate calculations for avoided costs associated with avoided generation facilities, distribution facilities, and transmission facilities. (*See id.*). As Mr. Luebbert explains, “it is not possible to create generic avoided costs levels to use across programs.” (*Id.* 9). Rather, these calculations are portfolio and type specific. (*Id.* 9-10).

Further, as Mr. Luebbert recognizes “[f]or the statutory analysis, avoided cost estimates serve as a proxy for the expected benefits of demand-side programs.” (*Id.* 9). To accurately calculate the benefits to both participants and non-participants, as required by § 393.1075.4 RSMo., the Commission must consider the relationship between the MEEIA programs and Ameren’s FAC. (*Id.* 5 n.2). As Ms. Mantle explains throughout her Rebuttal Testimony and as explained in response to Issue 1B below, it is possible that a reduction in energy will increase FAC costs to non-participants. (Mantle Rebuttal Test. 26-27).

**B. Does Ameren’s Fuel Adjustment Clause (“FAC”) affect the distribution of potential benefits projected from its MEEIA Cycle 4 Amended Application?**

Yes, Ameren’s FAC affects the distribution of potential benefits projected from its MEEIA Cycle 4 Amended Application as explained throughout the Rebuttal Testimony of Ms. Lena Mantle. The Commission must consider this distribution to meet its statutory duty of only allowing recovery for programs that “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.” § 393.1075.4 RSMo.

The determination of how the FAC affects the distribution of benefits, requires one to consider the cost of energy at the time the participant saved the kWh. (*See generally* Mantle Rebuttal Test.). Specifically, was the cost of the kWh saved (1) equal to, (2) below, or (3) above the cost of energy used in setting the FAC base factor. (*Id.* 25). One must also conduct this analysis from at least two perspectives: (1) the participant and (2) non-participants. (*Id.*).

A MEEIA program-participant always benefits through the FAC from the MEEIA program “because he or she paid for less electricity regardless of whether the kWh saved was at the time the market price was the same as the average, above the average, or below the average cost used in setting the base factor.” (*Id.* 26).

Non-participants, however, “only saved when the kWh saved was at a time when the market price matched the price used in setting the base factor or at a time when the market price was above the price used in setting the base factor.” (*Id.*). Any benefit that the non-participant might receive was also delayed “until they were charged the lower FAC rate,” which begins in later accumulation periods. (*Id.*).

Importantly, as Ms. Mantle points out, if the price for the kWh saved was at a market price below what was included in the base factor, then the price for the non-participant increased. (*Id.* 26-27). In that scenario, “the MEEIA program was not cost-effective for non-participants,” but “increased the FAC cost for the non-participants.” (*Id.* 27). This situation would fail the test required by § 393.1075.4 RSMo.

To meet its statutory duty of only allowing recovery for programs that “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 Commission must consider the effects of Ameren Missouri’s FAC. § 393.1075.4 RSMo.

**C. Does Ameren Missouri’s demand side plan value demand-side investments equal to traditional investments in supply and delivery infrastructure?**

No, Ameren’s demand side plan does not value demand-side investments equal to traditional investments in supply and delivery infrastructure. Rather, Ameren’s Amended Application places greater emphasis on demand-side investments that come with only the *possibility* of producing

the savings they assume. (*See* Marke Surrebuttal Test. 44-45). As Dr. Marke asserts, Ameren “has a perverse incentive to have the lowest targets possible that result in the highest returns in profit.” (*Id.* 44). Their proposed programs are completely funded by ratepayers, who bear 100% of the risk of the programs failing to achieve the savings Ameren claims. (*Id.* 28-29, 44-45; Marke Rebuttal Test. 35-36). Unlike supply-side resources, whose upfront costs are largely funded by shareholders who demand a “fair” return on their investment, ratepayers receive no guaranteed “return” on their investment. (*See id.*). Rather, Ameren receives the earnings opportunity for spending its customer’s money. (Marke Rebuttal Test. 3).

Further, as at least Dr. Marke and Mr. Seaver point out, it is unlikely that Ameren’s MEEIA programs will avoid any supply-side buildout. (*See, e.g.,* Marke Surrebuttal Test. 32-37; Seaver Surrebuttal Test. 10-12). Rather, due to the retirement and planned retirement of coal plants as well as changes in the Midcontinent Independent System Operator (“MISO”) energy market, Ameren must build generation to meet its customers’ load. (*See* Marke Surrebuttal Test. 34-37; Seaver Surrebuttal Test. 13-17). Once it comes online and as long it stays in working condition, the generation Ameren must build will produce energy. There is no guarantee, however, that Ameren’s proposed MEEIA programs will produce energy savings. (*See* Marke Surrebuttal Test. 5).

Given at least these considerations, it cannot be said that Ameren’s proposed MEEIA plan values demand-side investments equal to traditional investments in supply and delivery infrastructure.

**D. Do the programs in the demand-side plan, and associated incremental energy and demand savings, demonstrate progress toward the goal of achieving all cost-effective demand-side savings?**

No, most of the programs in Ameren’s proposed MEEIA Cycle 4 plan do not demonstrate progress toward the goal of achieving all cost-effective demand-side savings.<sup>4</sup> The OPC addresses the many problems with Ameren’s proposed programs in response to the questions included in Issue 7. For instance, many of the programs are duplicative of other available programs or market alternatives and many others will result in a large amount of free riders. (*See generally* Marke Rebuttal Test.). Therefore, these programs cannot be said to demonstrate progress toward the goal of achieving all cost-effective demand-side savings.

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<sup>4</sup> As discussed in response to Issue 7, the PAYS program likely meets this goal.

**2. Inflation Reduction Act (“IRA”)/Market Dynamics: Does Ameren's MEEIA Cycle 4 Amended Application sufficiently address the interaction of the IRA and other market dynamics with MEEIA?**

No, Ameren’s MEEIA Cycle 4 Amended Application fails to sufficiently address the interaction of the IRA and other market dynamics with MEEIA. If the Commission allows Ameren to implement its MEEIA programs as proposed, ratepayers will needlessly spend millions of dollars to entice individuals to adopt energy efficient measures they likely would have adopted regardless of the MEEIA programs. (*See, e.g.,* Marke Surrebuttal Test. 2-3). Further, not only will ratepayers fund incentives that Ameren will directly pay to individuals, but they will also pay a throughput disincentive and earnings opportunity to Ameren directly.

Energy efficiency is now well-known and many pieces of legislation and other market dynamics seek to drive consumers to adopt energy efficient measures. (*See generally, e.g.,* Kiesling Direct Test.; *see* Marke Direct Test. 22-33, 41-43). In addition to the IRA, these market dynamics include other funding-based programs, adoption of codes and standards, and changes to what type of entities can participate in the energy markets in Missouri. (*Id.*).

As to funding-based programs, perhaps the best known example is the IRA. It contains both generous tax credits, including up to \$8,000 for a Heat Pump HVAC, and \$150 million of Missouri-specific direct federal subsidies. (Marke Direct Test. 22-25). In fact, “[t]he maximum consumer rebate could be as high as \$14,000 per eligible household.” (*Id.* 24). Other programs also exist, such as the Low Income Weatherization Assistance Program (“LIWAP”), which provides funds to qualified individuals to “allow[] homes to be weatherized that would otherwise be ‘passed over’ due to health and safety concerns.” (*Id.* 26). Another federal law allocates “an additional \$77 million for Missouri” for the LIWAP. (*Id.*). This \$77 million is “on top of the existing funding streams” that currently fund the LIWAP. (*Id.*). In addition to the IRA and LIWAP, other funding sources also exist. These include the low interest loan program offered by the Missouri Department of Natural Resources, which “provides an avenue of funds to municipalities, school districts, and other organizations to allow them a funding source to help upgrade particular areas to energy efficient products.” (Kiesling Direct Test. 2-3).

In addition to funding sources, codes and standards have also changed to promote energy efficiency. For instance, the federal Energy Independence and Security Act (“EISA”) “set baseline standards for production of energy efficient products,” including light bulbs. (*Id.* 2). Municipalities such as St. Louis County and the City of St. Louis have also adopted building codes and standards that promote energy efficiency. (Marke Direct Test. 42-43). As Dr. Marke points out, “[n]aturally occurring energy efficiency adoption is rapidly increasing due to decades of marketing, increased federal appliance standards, and municipal building code requirements.” (Marke Surrebuttal Test. 2).

Further, the Commission partially lifted the ban on Aggregators of Retail Customers (“ARCs”) participating in Missouri. (Marke Direct Test. 30-31, 33). ARCs provide essentially the same service as Ameren’s current Business Demand Response program, but at no cost to Ameren’s ratepayers. (*See* Hull Direct Test. 2-3; Marke Rebuttal Test. 7).

Each of these seek to drive—and in some cases force—individuals and entities to adopt energy efficiency measures and come at low or no utility-related costs to Ameren’s ratepayers.

Ratepayers have only a finite amount of capital and should not be forced to pay for programs to induce energy efficiency upgrades that would occur naturally without them. (*See* Marke Surrebuttal Test. 44-45). Ameren’s proposed MEEIA programs will likely lead to a very high number of free riders. (*See, e.g., id.* 52; Marke Rebuttal Test. 13, 18). Failing to account for these free riders will lead to not only increased program costs, but the payment of throughput disincentive and earnings opportunity as well. Should the Commission approve Ameren’s Amended Application, it will be necessary to accurately determine the impact of the IRA and other market dynamics on a customer’s decision to make energy efficiency upgrades to accurately determine whether Ameren’s programs induced the energy efficiency changes. Ameren has failed to accurately account for the IRA and these other market dynamics in its Amended Application. (*See generally* Marke Rebuttal Test.). This failure supports why the Commission should reject Ameren’s Amended Application. (*See* Marke Rebuttal Test. 38-39).

### **3. Administrative Overhead: What should be included as administrative costs?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

#### **A. Should there be a cap on administrative costs?**

***Ameren Alternative Issue: Should the Commission modify the proposed programs to place a cap on administrative costs if the portfolio is determined cost effective?***

Yes, if the Commission allows Ameren to implement a fourth cycle of MEEIA programs, it should include a cap on administrative costs. (Marke Rebuttal Test. 40-41; Marke Surrebuttal Test. 54). As Dr. Marke explains, “based on historical precedent, some programs will allocate more funding to administrative overhead than actual measures.” (Marke Rebuttal Test. 35-36). Further, the IRA, which functions somewhat similarly to Ameren’s proposed programs and encompasses many comparable programs, includes a cap on administrative costs. (Marke Rebuttal Test. 35-36). To ensure that Ameren efficiently uses the funds its ratepayers are forced to pay to support energy efficiency, the Commission should include a cap on administrative costs. (*Id.*).



**i. If yes, what should the cap be?**

If the Commission allows Ameren to implement a fourth cycle of MEEIA programs, it should include a 20% cap on administrative costs for all programs, except for PAYS. (Marke Rebuttal Test. 40; Marke Surrebuttal Test. 54). Given the complexity and long-term design of the PAYS program, the Commission should set the cap on administrative costs for this program at 35%. (*Id.*).

**4. Earnings Opportunity (“EO”): If the Commission determines that Ameren may implement a MEEIA Cycle 4, should the Commission authorize an Earning Opportunity?**

Based on the language of the MEEIA statute, it appears that if the Commission determines that Ameren may implement a MEEIA Cycle 4, it must authorize an “earnings opportunit[y] associated with cost-effective measurable and verifiable efficiency savings.” *See* § 393.1075.3(3) RSMo. However, in setting that earnings opportunity, the Commission must bear in mind that it is Ameren’s ratepayers who bear 100% of the risk that Ameren will fail to meet its identified savings targets. (Marke Rebuttal Test. 3, 35-36, Marke Surrebuttal Test. 28-29). Unlike supply-side investments where shareholders receive a return on their investment to account for the risk they bear, with MEEIA shareholders bear *no* risk and still receive a profit. (*See id.*). The Commission must be cognizant of this difference between demand and supply-side investment in setting Ameren’s EO should it approve Ameren’s Amended Application in any capacity.

To the extent that the Commission authorizes a MEEIA Cycle 4, for programs other than demand response, the Commission should set the earnings opportunity at half of the currently approved percentage return on equity based on spend. (Marke Surrebuttal Test. 53). As to the demand response programs, the earnings opportunity should be “[b]ased on [the] number and size of events called consistent with the one-year extension.” (Marke Surrebuttal Test. 53).

**A. In valuing demand side investments equal to supply side investment as required by § 393.1075.3 RSMo.:**

**i. Who bears the risk of Ameren not achieving its projected energy targets?**

Ameren’s ratepayers bear 100% of the risk of Ameren not achieving its projected energy targets. (Marke Rebuttal Test. 3, 35-36; Marke Surrebuttal Test. 28-29; *see* Lange Direct Test. 20). Since the inception of MEEIA in 2012 Ameren has recovered approximately *\$1.2 billion* from its ratepayers for its MEEIA programs. (Stever Direct Test. 2). To date, Ameren has invested \$0 in MEEIA. (Lange Surrebuttal Test. 6).

**ii. Is Ameren’s proposed EO (reward) commiserate with the risk it bears?**

No. Ameren’s proposed earnings opportunity is out-of-line with the risk that it bears and represents only windfall profits. (Marke Rebuttal Test. 35-38). Ameren bears no risk with regard to MEEIA as it will recover not only its program costs, but its lost revenues and earnings as well. (*Id.* 36; *see* Lange Surrebuttal Test. 3-6).

**B. Are any of the proposals regarding the Earnings Opportunity ((1) Ameren’s proposal, (2) Dr. Marke’s proposal in Surrebuttal Testimony, or (3) Ms. Lange’s proposal in Surrebuttal Testimony) consistent with § 393.1075.3(3) RSMo.’s requirement that any earnings opportunity be “associated with cost-effective measurable and verifiable efficiency savings”?**

Yes, Dr. Marke’s proposal in Surrebuttal Testimony is consistent with § 393.1075.3(3) RSMo.’s requirement that any earnings opportunity be “associated with cost-effective measurable and verifiable efficiency savings.” (*See* Marke Surrebuttal Test. 28-29).

**i. If so, and if the Commission determines that Ameren may implement a MEEIA Cycle 4, which, if any, proposal should be used to calculate any earnings opportunity?**

The Commission should adopt Dr. Marke’s proposal in Surrebuttal Testimony such that the earnings opportunity for the non-demand response programs be set at half of the currently approved return on equity basis based on spend. (Marke Surrebuttal Test. 53). The earnings opportunity for the demand response programs should be “[b]ased on [the] number and size of events called consistent with the one-year extension.” (*Id.*).

**5. Evaluation, Measurement, and Verification (“EM&V”): If the Commission approves Ameren Missouri’s MEEIA Cycle 4 Amended Plan, should the Commission approve Ameren Missouri’s EM&V plans?**

No, if the Commission approves Ameren’s MEEIA Cycle 4 Amended Plan it should not approve Ameren’s prospective EM&V plan or its proposal to recognize multiple subsets of spillover and free ridership. (Marke Rebuttal Test. 31-34). Ameren’s proposal to move to a prospective EM&V process will lead to contentious litigation and further increased costs. (*Id.* 33-34).

Rather, as Dr. Marke describes, if the Commission approves any suite of MEEIA programs, it should maintain the EM&V process from the MEEIA Cycle 3

extensions. (*Id.* 34). The process should be completed on a retrospective basis and should not differentiate between subsets of free riders and spillover. (*Id.*).

Alternatively, the Commission should mandate that the utilities work with stakeholders over the life of the Cycle 4 programs to move toward a statewide program. (Marke Rebuttal Test. 40-41; Marke Surrebuttal Test. 54). In doing so, the Commission should order *no* EM&V for this MEEIA cycle. (*Id.*).

**A. In addressing this question, should the results of the EM&V of Ameren Missouri’s MEEIA Cycle 4 be applied on a prospective or retrospective basis?**

The results of the EM&V should be applied on a retrospective basis. (Marke Rebuttal Test. 34). Though even a retrospective EM&V process will likely be contentious for the many reasons addressed in Dr. Marke’s testimony, a prospective EM&V process would require stakeholders to agree on assumptions, which would likely be challenging given the amount of duplicative funding streams currently available to customers. (*Id.*).

**B. Should EM&V consider:**

To the extent that the Commission approves Ameren’s MEEIA Cycle 4 Plan, it should require any EM&V conducted to consider each of the following items.

**i. the rebound effect;**

Yes, the EM&V should consider the rebound effect. (Marke Direct Test. 17-22; Poudel Rebuttal Test. 10-14). The rebound effect occurs when “the expected energy savings from improvements in energy efficiency are partially—or sometimes entirely—offset by increased energy consumption.” (Marke Direct Test. 17; *see* Poudel Rebuttal Test. 11). The existence of this phenomenon is uncontroversial and has been well documented since it was first articulated in 1865. (Marke Direct Test. 17, 20; Poudel Rebuttal Test. 11-12).

To account for the rebound effect, the EM&V should include either “(1) an across-the-board 10% reduction in energy savings be applied to any future EM&V filings to account for the rebound effect or (2) that future EM&V studies [should] specifically analyze the rebound effect for households participating in the EM&V report.” (Marke Direct Test. 21; *see* Poudel Rebuttal Test. 13).

**ii. interactive effects;**

Yes, the EM&V should consider the interactive effects that occur when a customer installs several measures. (Tevie Rebuttal Test. 8-10). “An interactive effect occurs when there is an interplay among several measures so that it is virtually impossible to isolate the impact of one measure . . . from the joint impact of all the measures.” (*Id.* 8). “Interactive effects minimize the impact(s) of other measures that have been installed in addition to a primary measure.” (*Id.*). To ensure appropriate attribution, the EM&V must account for the interactive effects between measures. (*Id.* 9-10).

**iii. the principal/agent issue;**

Yes, the EM&V should consider the principal/agent issue described in Dr. Marke’s Direct Testimony. (Marke Direct Test. 9-16). As Dr. Marke describes, this situation arises when “one person or entity (the ‘principal’) hires another person or entity (the ‘agent’) to act on their behalf.” (*Id.* 9). “The problem arises due to potential conflicts of interest between the principal and the agent, usually stemming from differing goals or information access.” (*Id.*). This issues arises most prominently in programs dealing with HVACs. (*Id.*). Specifically, two issues exist: (1) because HVAC contractors are paid based on the amount of the sale, they are incentivized to find a problem and to recommend a large unit; and (2) due to poor workmanship and/or ignorance of what actions are necessary to ensure efficient operation, the installed units may not achieve the efficiencies assumed. (*Id.* 9-10). If the Commission were to authorize a fourth cycle of MEEIA programs and if one of those programs dealt with HVACs, then the Commission should order that Ameren include specific controls in its EM&V process to consider the principal/agent issue. (*Id.* 16).

**iv. the IRA;**

Yes, any EM&V process must account for the IRA. (Marke Direct Test. 22-29). The IRA includes both generous direct incentive payments and tax credits that directly impact energy efficiency adoption. (*Id.* 22-25). For instance, the Energy Efficient Home Improvement Tax Credit “covers upgrades like insulation, windows, HVACs, and home energy audits.” (*Id.* 22). Similarly, the Heat Pump Tax Credit is a “separate credit [that] applies specifically to qualified heat pumps like geothermal heat pumps and air-source heat pumps.” (*Id.* 23). The Home Energy Rebates program also provides direct rebates to qualifying individuals, which could

include a heat pump rebate of \$8,000. (*Id.* 24 n. 25 (citing Sierra Club, Understanding the IRA Home Energy Rebates (2023) <https://www.sierraclub.org/understanding-irahome-energy-rebates>)). The significant overlap between Ameren’s proposed MEEIA Cycle 4 and the IRA requires that the EM&V process consider the impact of the IRA. (*Id.* 28).

**v. operational inefficiencies;**

Yes, any EM&V process must account for operational inefficiencies such as customers’ failure to change their HVAC air filters. (Marke Rebuttal Test. 16). “The U.S. Department of Energy estimates that dirty filters raise an air conditioner’s energy consumption by 5% to 15%.” (*Id.* (citing U.S. Dep’t of Energy, Maintaining Your Air Conditioner (2024), <https://www.energy.gov/energysaver/maintaining-your-air-conditioner>)). This additional energy usage must be considered in the EM&V process.

**vi. free ridership;**

Yes, any EM&V process must consider the significant free ridership that will exist throughout Ameren’s MEEIA Cycle 4 programs, however, it should not attempt to categorize the types of free ridership. (Marke Rebuttal Test. 34). “Free riders are customers that would have purchased the energy efficiency measures regardless of the rebates from Ameren Missouri.” (Marke Rebuttal Test. 32).

Significant free ridership concerns exist with Ameren’s proposed MEEIA Cycle 4. For instance, the New Construction program “has been attempted in previous MEEIA iterations across multiple utilities” and the “result has been large free ridership driven by home developers that specialize in EnergyStar constructed homes.” (Marke Rebuttal Test. 18). Further, significant overlap exists between the IRA and the programs Ameren proposes to offer as part of its MEEIA Cycle 4. (*See, e.g.*, Marke Direct Test. 27). To the extent the Commission allows Ameren to implement any of the MEEIA programs, it must order that Ameren consider free ridership in any EM&V process. (Marke Rebuttal Test. 34).

**vii. spillover;**

Yes, any EM&V process should account for spillover. (Marke Rebuttal Test. 34). “Spillover refers to energy efficiency actions that only occurred because the customer became aware of the opportunity to save more energy as a result of the rebates received

from Ameren Missouri.” (*Id.* 33). However, as Dr. Marke explains “the spillover argument has been eroded over time by the saturation of efficient appliances brought on by increased codes and standards and by the overall collective knowledge of energy efficiency by the public at large.” (Marke Surrebuttal Test. 47). It is likely that “any theoretical additional savings obtained through spillover from direct rebates is a rounding error at best in terms of what could reasonably be attributable to the Company at this point.” (*Id.*). Similar to the issue with free ridership, the EM&V process should consider spillover, but not the subcategories of spillover Ameren requested. (Marke Rebuttal Test. 33-34).

**viii. time-based rates; and**

Yes, any EM&V process should account for time-based rates. (*See* Marke Direct Test. 35-40). Use of time-based rates “would achieve demand savings that would dwarf any historical MEEIA portfolio.” (Marke Direct Test. 35). Any EM&V process should account for the savings potentially attributable to time-based rates.

**ix. any other issues.**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

**C. Should the EM&V be completed by a single independent, Commission-approved consultant with no utility oversight?**

Yes, to avoid conflicts of interest the EM&V should be completed by a single independent, Commission-approved consultant with no utility oversight. (Marke Surrebuttal Test. 46). This would avoid “the obvious conflict of interest inherent between a utility and a utility’s private EM&V consultant.” (*Id.*).

**D. Should the TRM and deemed savings tables included in Ameren’s MEEIA Cycle 4 Amended Application be approved, approved with modifications, or rejected?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

- i. Prior to approval, should the Commission require Ameren to submit a TRM and deemed savings table with serviceable links and page specific citations of the assumptions underlying the TRM and deemed savings table themselves?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

- a. If not prior to approval, when must Ameren submit these items?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

- 6. Throughput Disincentive Mechanism: If Ameren’s MEEIA Cycle 4 Amended Application is approved, should it include a Net Throughput Disincentive Mechanism as requested by Ameren Missouri, or a Net Variable Revenue Mechanism as proposed by Staff?**

If the Commission approves Ameren’s MEEIA Cycle 4 Amended Application, it should include a Net Variable Revenue Mechanism as proposed by Staff. (Marke Surrebuttal Test. 54, Lange Direct Test. 24-27). Staff’s proposed mechanism is easier to implement than the current net throughput disincentive mechanism. (*See* Lange Direct Test. 27).

- A. If a Net Throughput Disincentive Mechanism is authorized, what, if any, modifications are necessary to address the changes in circumstances associated with the proliferation of time-based rates and the passage of the federal Inflation Reduction Act (“IRA”)?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

- B. If a Net Throughput Disincentive Mechanism is authorized, is the proposed Technical Resource Manual and planned Evaluation, Measurement, and Verification reasonable for its administration?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

- C. Does § 386.266.3 RSMo., which authorizes Plant in Service Accounting (“PISA”), prohibit the Commission from authorizing a Net Throughput Disincentive Mechanism under § 393.1075, RSMo?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

**7. Programs: Should the Commission approve, approve with modifications, or reject Ameren’s proposed tariff programs?**

The Commission should reject Ameren’s MEEIA Cycle 4 Amended Application, including its proposed tariff programs. (Marke Rebuttal Test. 38-39).

To the extent the Commission chooses to approve a MEEIA Cycle 4 for Ameren, it should modify the programs as explained throughout the Rebuttal Testimony of Dr. Geoff Marke. (*See* Marke Rebuttal Test. 4-29). The modifications the Commission should make are explained more fully below when addressing each individual program.

**A. In regards to programs, specifically:**

**i. Residential:**

**a. HVAC**

To the extent that the Commission allows Ameren to implement a residential heating and cooling program, it must include parameters that will account for the principal agent problem explained in Dr. Marke’s Direct Testimony. (*See* Marke Direct Test. 9-16).

Further, the Commission should require Ameren to “suggest to its customers that they ‘stack’ PAYS’s on-tariff financing options with any rebate they receive from the heating and cooling program.” (Marke Rebuttal Test. 17). Stacking PAYS with rebates allows “the customer protections in place with PAYS...[to] ensure that a heating and cooling unit is right-sized and the whole home is audited to ensure building shell measures are installed, where applicable.” (*Id.*). Because, importantly, without ensuring that a customer’s whole home is audited a customer may “have a new EnergyStar HVAC unit functioning at less than efficient levels due to improperly sealed air ducts and/or poor insulation.” (*Id.*). Therefore, to the extent the Commission approves any residential HVAC program, to help combat the complexity involved with ensuring energy and demand savings actually materialize, the Commission should require Ameren to encourage its customers to stack any incentive received through the residential heating and cooling program with PAYS. (*Id.*).

**b. PAYS**

If the Commission allows Ameren to implement a fourth cycle of MEEIA programs, it should require Ameren to



include a PAYS Program. (Marke Rebuttal Test. 18-19). The Commission should also modify the PAYS Program to require stacking with the residential heating and cooling program and, to the extent it does not wish to eliminate the budgets associated with eliminated programs, should increase the PAYS budget by reallocating the funding associated with those eliminated programs. (*Id.*). Further, the PAYS Program should be modified to include a FastTrack option. (*Id.* 19-20 referencing GM-R-1).

**c. New Construction**

If the Commission allows Ameren to implement a fourth cycle of MEEIA programs, it should eliminate the Whole Home New Construction program because, based on experience in previous MEEIA cycles across multiple utilities, this program results in large free ridership. (Marke Rebuttal Test. 18). This free ridership is “driven by home developers that specialize in EnergyStar constructed homes.” (*Id.*). The budget associated with this program should either be eliminated or redirected to the PAYS program under the alternative scenario articulated by Dr. Marke. (*See id.*).

**d. Demand Response**

- **Specifically, should Ameren be allowed to incentivize new thermostats?**

The Commission should reject the residential demand response program because it is redundant of Ameren’s automated meter infrastructure (“AMI”) investment. (Marke Rebuttal Test. 9-10). Ameren’s ratepayers “have invested over one billion dollars in AMI hardware, the attendant software, and an Ameren-specific private 4G network.” (*Id.* 9). The Commission could utilize these AMI meters, which ratepayers are already paying for, and “[i]n the next Ameren . . . rate case . . . order TOU rates that would achieve demand savings that would dwarf any historical MEEIA portfolio.” (Marke Direct Test. 35).

However, if the Commission allows Ameren to have a residential demand response program, it should prohibit Ameren from providing incentives for new thermostats. (Marke Rebuttal Test. 10). Again, this

recognizes that Ameren already has infrastructure in place—which its customers are already paying for—that encourages similar behavior. (*Id.*).

**e. Education/Energy Efficiency (“EE”) Kits**

If the Commission allows Ameren to implement a fourth cycle of MEEIA programs, it should eliminate the residential education programs and the energy efficiency kits. (Marke Rebuttal Test. 15-16, 18). The budgets associated with these programs should be either redirected to the PAYS Program or eliminated entirely. (*Id.*).

As to the education programs, people are now well aware that some products are more efficient than others and Ameren need not spend additional ratepayer dollars to convince people of this fact. (*See id.*). However, if Ameren implements a MEEIA education program, it should stress to customers the importance of changing their HVAC’s air filter. (*Id.* 16). This type of education could be accomplished through a bill insert and “does not require the amount of money that is currently allocated for the education program.” (*Id.*).

Similarly, the energy efficiency kits program should be eliminated. (*Id.* 18). As Dr. Marke explains, these kits include “‘feel good’ items that the Company gives out for free.” (*Id.*). It is “debatable” whether the people who receive these kits actually install these items. (*Id.*). Although the Parties negotiated the removal of this program during the one-year extensions, Ameren seeks its return in its Amended Application. (*Id.*). The Commission should eliminate these programs, just as Ameren agreed to in the prior extensions. (*Id.*).

**ii. Business:**

**a. Business Lighting**

If the Commission allows Ameren to implement a fourth cycle of MEEIA programs, it should greatly limit Ameren’s request to implement a business lighting program. (Marke Rebuttal Test. 12-13). Specifically, the Commission should limit any lighting measure expenditures to “25% of the business budget in year 1; 20% in year 2; and, finally, 15% in year 3.” (*Id.* 13). “Any subsequent MEEIA filings should omit business lighting in its entirety.” (*Id.*)

As Dr. Marke explains, lighting is considered a “‘low hanging’ energy efficiency measure[.]” (*Id.* 12). During the extension years, Ameren agreed to limit its business lighting program. (*See id.* 12). These limitations recognized that the lighting market has changed, due in part to the federal Energy Independence and Security Act (“EISA”) mandating that lightbulbs meet certain efficiency standards. (*Id.*). Similarly, the limitations in the extension years encourage “building shell and heating/cooling measures that represent larger energy and demand savings.” (*Id.*).

In recognition of these two important issues, should the Commission allow Ameren to implement a fourth cycle of MEEIA programs, it must greatly limit Ameren’s expenditures on business lighting. (*Id.* 12-13).

**b. Demand Response**

If the Commission allows Ameren to implement a fourth cycle of MEEIA programs, it should include a business demand response program, similar to the one proposed by Ameren. (Marke Rebuttal Test. 9).

However, it should be noted that although the Business Demand Response Program is the “most cost-effective program,” a free-market alternative exists. (*See* Marke Direct Test. 29-31; Marke Rebuttal Test. 5-9; Marke Surrebuttal Test. 3, 53). The Commission has partially lifted the prohibition against third-party aggregators of retail choice (“ARCs”) participating in demand response in Missouri. (Marke Rebuttal Test. 5). The lifting of this prohibition became effective on January 1, 2024, one year prior to when Ameren seeks to begin its fourth cycle of MEEIA program. (*Id.*; Lozano Direct Test. 7). Allowing third-party ARCs to implement the business demand response program would save ratepayers significant amounts of money as they would not pay either a throughput disincentive or an earnings opportunity. (*See* Marke Direct Test. 33). However, because one cannot be sure that third-party ARCs will participate in Missouri if the Commission allows Ameren to implement a fourth cycle of MEEIA programs, the Commission should allow Ameren to implement a business demand response program. (Marke Rebuttal Test. 9).

**c. Midstream**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

**d. Custom/Standard**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

**iii. Income-Eligible:**

As to the income-eligible programs in general, it should be noted that large capital infusions are coming to Missouri to accomplish goals similar to Ameren’s goals associated with its income-eligible program. (Marke Rebuttal Test. 23). These large capital infusions come at significantly decreased costs to Ameren’s ratepayers, as they do not require payment of a throughput disincentive or an earnings opportunity. (*See id.* 25).

Namely, Missouri will receive an additional \$77 million through the low-income weatherization assistance program (“LIWAP”). (Marke Direct Test. 26). Similarly, of the approximately \$150 million Missouri will receive through the Inflation Reduction Act (“IRA”) 40% of the funding must go to low and/or moderate-income households. (Marke Rebuttal Test. 23).

Further, unlike Ameren’s proposed income-eligible programs, the IRA includes an important consumer protection in that administrative costs cannot exceed 20%. (*Id.*). Ameren’s proposed programs, on the other hand, suffer from extremely high administrative costs, at times nearing 50%. (*See id.* 25). To the extent that the Commission approves any income-eligible programs, it should include a condition that administrative costs do not exceed 20% of the costs, similar to the IRA. (*Id.* 28).

**a. Multi-family**

If the Commission allows Ameren to implement a multi-family income-eligible program during a fourth cycle of MEEIA programs, it should include provisions to protect ratepayers from high administrative costs and from being priced out of their homes. (Marke Rebuttal Test. 25).

As Dr. Marke explains, a concern exists that “income-eligible renters could be displaced (and/or priced-out) of

their rental units as a result of the retrofits.” (*Id.*). Being cognizant of this concern, the federal government included consumer protections in the IRA to combat it. (*Id.* 25-27). Though similar protections may be difficult to enforce, the Commission must include them to ensure that income-eligible renters are not displaced by the energy efficiency upgrades made to their homes. (*Id.* 27).

#### **b. Single Family**

The Commission should reject Ameren’s single-family income-eligible program because community action agencies who administer the State’s LIWAP provide the same service at a substantially reduced cost to Ameren’s ratepayers. (Marke Surrebuttal Test. 24-27). Importantly, Ameren’s ratepayers already support a single-family income-eligible program through a “50/50 ratepayer/shareholder sharing of LIWAP costs embedded in utilities’ rates today.” (*Id.* 27). They do so without having to pay a throughput disincentive or earnings opportunity to Ameren for administering the programs. (*Id.* 25).

To the extent the Commission wishes to include an income-eligible single-family program it should require Ameren to cap administrative costs at 20% and to consider implementing a program similar to the KC Lilac program described in Dr. Marke’s Surrebuttal Testimony. (*Id.* 28-29, 54).

#### **iv. Pilots/Research and Development**

To the extent the Commission approves Ameren’s Amended Application, it should approve Ameren’s proposed pilot program process. (Marke Rebuttal Test. 20). Though Ameren has not identified exactly which pilots it proposes, it proposes a process “where stakeholders convene and select specific pilot programs for consideration.” (*Id.*). This process is similar to previous MEEIA cycles. (*Id.*).

#### **B. If the Commission approves the demand-side program plan, should the Commission adopt or modify the form of Ameren Missouri’s DSM programs’ exemplar tariff sheets which were attached as Appendix J?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

**C. Do the DSM programs' exemplar tariff sheets comply with the Commission's Promotional Practices requirements found in 20 CSR 4240-3.150 and 20 CSR 4240-14.030? If not, how do they not comply, and should the Commission grant a variance(s) to the extent they are determined not to comply?**

The OPC takes no position on this issue at this time, but reserves the right to do so after the close of evidence.

WHEREFORE, the Office of the Public Counsel respectfully submits its Statement of Positions.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 17th day of July 2024.

/s/ Lindsay VanGerpen