BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA.	))))	**File No. EO-2015-0055**

STAFF'S REPLY BRIEF

COMES NOW, the Staff of the Missouri Public Service Commission, by and through counsel, and for its Reply Brief states as follows:

This Reply Brief responds to certain positions raised in the initial post-hearing briefs of Ameren Missouri and other signatories of the objected-to Non-Unanimous Stipulation and Agreement[1] (the Utility Stipulation). Staff addresses the joint position (articulated in the Utility Stipulation) and refers to it as the "**Utility Plan**" sought by Ameren Missouri under the Missouri Energy Efficiency Investment Act (MEEIA) for its proposed demand-side programs for 2016-2018 (Cycle 2).

Staff's Reply Brief renews reasons why the Commission should order a modified MEEIA Cycle 2 Plan as set forth in the objected-to Amended Non-Unanimous Stipulation and Agreement Regarding Ameren Missouri's MEEIA Cycle 2 (Non-Utility Stipulation) entered into by the Staff, Office of Public Counsel, Earth Island Institute d/b/a Renew Missouri, the Sierra Club, Missouri Industrial Energy Consumers, and the Midwest Energy Consumers' Group. The Non-Utility Stipulation sets forth the joint position of the above non-utility parties and is referred to as the "**Non-Utility Plan**".

[1] Ameren Missouri, Missouri Department of Economic Development-Division of Energy (DE), Natural Resource 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.

Staff's Reply Brief addresses why the Commission should not be swayed by any arguments raised by Ameren Missouri and its Utility Plan allies in their initial briefs. Any specific point raised in their initial briefs that is not addressed in this Reply Brief should not be considered as agreed to in any way therewith.

The Utility Plan for MEEIA Cycle 2 years 2016-2018 is not MEEIA compliant and is not just and reasonable

Concerned that customers are paying for something they are not receiving, at hearing, Commissioner Stoll asked:

> Q…..isn't the fact that the [MEEIA] statute says that all customers should benefit regardless of whether or not they participate, isn't that what makes the law non-confiscatory? Because otherwise those folks who get no benefit are paying for something that they're not getting?
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> Staff witness Rogers:
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> A. I would agree.[2]

The concern that customers are paying hard dollars now for future benefits they will never/not likely receive future benefits is not a question of whether the MEEIA statute is "non-confiscatory". It is a question of whether MEEIA demand-side programs offer any benefit to all customers in the class regardless of whether the programs are used by all customers[3] and whether the resulting MEEIA charge through the EEIC Rider is "just and reasonable".[4]

Staff's Initial Brief explains that the Utility Plan is not MEEIA compliant, is way too costly, returns too few benefits to customers, would result in an EEIC charge for a MEEIA Cycle 2 that is not just and reasonable, and should not be approved by the Commission.

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[2] Tr. p 779, lns 3-9.
[3] Sect. 393.1075.4
[4] Sect. 393.130.1

Consider that program costs for the Utility Plan are $185 million alone[5]. Add another $60 million[6] for projected throughput disincentive and share of achieved deemed net shared benefits (TD-NSB) and another $23 million[7] for the performance incentive (which takes a percentage of the deemed net shared benefits for energy savings). The Utility Plan's expected result is that all customers – except residential low-income exempt and commercial/industrial "opt outs" – will pay for Ameren Missouri's accelerated recovery of over $268 million in a 6 year period, with recovery of $245 million in the first three years.

Nearly 87% of all Ameren Missouri customers are residential. The vast majority of residential customers do not participate in MEEIA programs and are expected to receive very little, if any net benefits from Utility Plan's programs.[8]

The notion of energy efficiency savings - whether they originate as the result of a costly company-run portfolio of programs or whether they occur naturally in the marketplace – should support the cause of deferring supply-side investments. However, the best bargain for all customers results from naturally-occurring energy efficiency savings due to market forces changing the market place. The market does not lie. A naturally-occurring market works to benefit all customers yielding the lowest possible transaction cost. On the other hand, MEEIA programs that may help transform the market must be paid for by Ameren customers whether customers participate in the

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[5] Ex. 712, Sched. JAR-1 reflects costs and benefits in discounted dollars so that the long stream of benefits over a 20 year period can be compared with the costs that occur in the near term. See lns **b** and **c** under Portfolio Utility Stipulation ($99 million + $86 million = $185 million in discounted dollars, or $197 million nominal dollars).
[6] Ex. 712, Sched. JAR-1. See ln **l** under Portfolio Utility Stipulation.
[7] Ex. 712, Sched. JAR-1. See line **m** under Portfolio Utility Stipulation. $23 million is based on receiving $30 million during years 5 and 6 for attaining 100% of energy savings goal in Utility Plan and discounting the $30 million back to year 1. This could go as high as $48 million (nominal dollars) if Ameren attains 130% of its energy efficiency goals. Non-Unanimous Stipulation and Agreement, Appendix A (also referred to as the Utility Plan)
[8] Ex. 712, p.7, lns 1-4.

programs or not. Utility Plan costs are substantial – at least $268 million over a 6 year period. Accordingly, MEEIA requires that demand-side programs result in energy or demand savings and are beneficial to all customers regardless of whether the programs are used by all customers.[9] The Utility Plan fails to meet this MEEIA requirement.

Chasing energy efficiency savings from the Utility Plan's costly programs is like chasing ephemera. Projected deemed savings may not happen because customer benefits are simply too low and too uncertain to ever occur. Ameren witness Rick Voytas summed it up best:

> "The impact of lower avoided costs on energy efficiency is that the benefits of energy efficient measures have become smaller. Lower avoided costs can cause marginally cost-effective measures to become no longer cost effective, reducing potential; or can cause cost-effective measures to simply be less cost effective. *Either result reduces the total benefits realized by customers*.[10] "[*emphasis added*]

The expected "payback" period for customers' benefits – the period over which benefits, if any materialize, would flow back to customers - is up to 20 years. Whether customers receive promised benefits depends on whether today's assumptions and "deemed" values hold true over a 20 year period. It is not realistic to believe that the assumed savings projections made today will ever hold true over a 20 year payback period for customers.[11] On that basis alone, no rational person would take that bet given the very low level of net benefits expected for the vast majority of customers.

Yet, Ameren argues its net shared benefits (NSB) model aligns the financial interests of the Company with the interest of its customers to use energy more efficiently. Staff disagrees. The Utility Plan is based on a NSB model and

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[9] Sect. 393.1075.4
[10] Ex. 100, p. 27, and Ex. 711, cited by Staff witness John Rogers in Sched. JAR-S4-2.
[11] See Staff's Initial Brief, pp. 10-16.

goes one-way, shifting all risk and cost to its customers. In real terms, the Utility Plan gives Ameren a percentage of the NSB – about $60 million - based solely on projected deemed energy savings for its throughput disincentive with no EM&V to determine actual lost revenues. For its earnings opportunity, Ameren takes another percentage of NSB for its performance incentive (with EM&V – valued at $23 million at 100% of its energy efficiency savings goal). Add to that the $185 million of program costs to be collected in the first three years, and customers will be on the hook for over $268 million.

So what are customers getting for their $268 million? Rate case public hearings have shown a growing concern by customers about the Energy Efficiency Investment Charge they see as a separate line item charge on their bills. For residential customers, only the few that participate in demand-side programs and receive notably lower bills due to lower energy usage and marginally lower energy market prices are "expected" to reap any meaningful net benefit. The majority of customers – those that do not participate in these programs - will bear the full brunt of paying the $268 million cost for the Utility Plan MEEIA Cycle 2 but only receive marginally lower bills due only to lower energy market prices.

Unlike supply-side investments that require shareholder investment and risk, Ameren's shareholders pay nothing toward the cost of demand-side programs because they are 100% funded by Ameren customers – with the majority of those customers, the non-participants, receiving no overall benefit and all the risk. In contrast to Utility Plan demand-side programs, supply-side investments provide some benefit to all customers.

Clearly, the Utility Plan demand-side programs are not on an equal footing with traditional supply-side resources as required by MEEIA.

With a near guarantee to recover at least $268 million from its customers, Ameren argues its Utility Plan is MEEIA-compliant because its "financial incentives are aligned with helping customers use energy more efficiently". There is no question Ameren has in place the financial incentives to reward its shareholders. The Utility Plan's financial incentives are designed to maximize Ameren's earnings from offering an expensive portfolio of demand-side programs whose return to Ameren is based on projected deemed energy and demand savings values for each installed measure. But Ameren ignores an equally important part of MEEIA that requires the alignment of company financial incentives with the customers' incentive. MEEIA requires financial incentives be aligned "*in a manner that sustains or enhances utility customers' incentive to use energy more efficiently…*" (emphasis added) Again, the Utility Plan fails to meet this MEEIA requirement.

Nothing in the Utility Plan either "sustains or enhances" Ameren customers' incentive to use energy more efficiently. Layering MEEIA charges for such a rich plan onto customer bills does not sustain or enhance customers' incentive to use energy more efficiently. Instead it works a hardship on the most vulnerable lower and moderate income customers – especially those that do not participate in Ameren's demand-side programs and those that do not qualify for a low-income exemption.

Putting aside for a moment the rich financial incentives Ameren has baked into its Utility Plan to capture its TD-NSB and to earn a performance incentive based solely on energy savings, Ameren "…has agreed to work collaboratively to identify additional

cost-effective energy savings opportunities between January and April of 2016."[12] As Public Counsel has pointed out, and Staff concurs, Ameren's promise to work with stakeholders is nothing more than lip service and ignores the failure of past collaborative efforts:

> "Ameren has already met with stakeholders to discuss additional savings strategies. In fact, the evidentiary hearing in this case was delayed so that the parties could meet and attempt to work together [internal cite omitted]. As the Commission can infer, the parties were unable to resolve the many differences. The agreement to work together contained in the utility stipulation does nothing to ensure a different result. Given Ameren's continued threats to discontinue its MEEIA offering if it does not get its way, it is surprising that any party would believe that this "solution" has any purpose."[13]

Again, the Utility Plan's proposed "collaborative" effort is nothing more than the same failed one-sided process that brought us to litigation and more importantly, fails in moving toward the MEEIA goal of achieving all cost-effective demand-side savings.

The Non-Utility Plan is MEEIA compliant and just and reasonable and should be approved by the Commission

Staff supports the Non-Utility Plan because, unlike the Utility Plan, it provides a more active and structured collaborative process that moves toward the MEEIA "goal of achieving all cost-effective demand-side savings" by:

- Convening an expert panel (Delphi panel) led by a mediator or facilitator to improve program participation rates; and,
- Providing a process for 2016 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 "all cost-effective" demand-side savings and is beneficial to all customers.

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[12] Initial Post Hearing Brief of Ameren Missouri, p.14.
[13] Post-Hearing Brief of the Office of Public Counsel, pp. 14-15.

Staff supports the Non-Utility Plan DSIM (demand-side investment mechanism) because, unlike the rich one-sided financial rewards baked into the Utility Plan DSIM, the Non-Utility Plan DSIM provides substantial and well-served earnings opportunities for Ameren Missouri through performance incentives that incent Ameren Missouri to:[14]

- Actively participate and engage in the stakeholder process that can improve program participation rates and to do so in a way that rewards Ameren by earning a performance incentive for improving participation;[15] and to

- Engage the stakeholder process to identify and drive improved energy efficiency and demand savings strategies and programs in 2016 so that Ameren may earn its performance incentive for achieving kilowatt demand savings;[16] and to

- Use year 2016 and the stakeholder process to identify strategies and programs to improve energy efficiency savings for 2017 and 2018 and to do so in a way that rewards Ameren for additional energy efficiency savings resulting from the expert panel process that may result in the Commission ordering a change to Ameren's kilowatt-hour energy savings target.[17] (This is done through the optional performance incentive award for 2017 and 2018 energy efficiency savings as set forth in the Non-Utility Plan.)

The Non-Utility Plan DSIM component for net throughput disincentive (NTD) is designed to recover only the actual lost revenues from energy efficiency savings that

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[14] See Staff's Initial Brief, pp. 50-53, and Post-Hearing Brief of the Office of Public Counsel, pp. 39-42, for more detailed discussion of the benefits of the three-part performance incentive component of the Non-Utility Plan DSIM (earnings opportunities through performance incentives that reward improved kilowatt demand savings, improved program participation, and additional energy efficiency savings for 2017 and 2018 as result of expert panel process).

[15] Ex. 802, p. 8. Under the Non-Utility Plan, this performance incentive component incents Ameren to pursue programs that have broad impact and ensure that low-income customers can benefit from MEEIA by making available to Ameren the ability to include 5% of program costs associated with its Custom/Standard or residential programs for multi-family low-income units and/or its multi-family low-income direct install program with the possibility of Ameren earning an additional $537,000.

[16] Ex. 702, pp. 9-10. Demand-related performance incentive of the Non-Utility Plan has two tiers. If Ameren achieves 121,100 kW savings, it will receive an incentive equal to the coincident peak demand kW savings multiplied by the approximate value of the forgone earnings opportunity of $48/kW (using the Meramec retirement as a reasonable surrogate to develop a value for the forgone earnings opportunity. For achieving kW savings exceeding 834,000 kW, Ameren will receive its second tier demand incentive of $250/kW, not to exceed an additional 166,000 kW. The second tier is based on the value to shareholders of a deferred investment in a combined cycle plant pursuant to modeling done by Ameren in its integrated resource filing.

[17] Ex. 802, p. 12. Should the Commission order this optional energy savings (kilowatt-hour) performance incentive under the Non-Utility Plan, Ameren would receive $2 million at 105%, $3 million at 130%, and $5 million at 150%.

are measured and verified by retrospective EM&V and is unlike the Utility Plan's TD-NSB. The "NSB" part of the Utility Plan's TD-NSB gives Ameren an additional earnings opportunity by awarding Ameren a share of the pool of annual net shared benefits. The Utility Plan's annual net shared benefits are determined by the projected deemed energy savings and deemed avoided costs for each installed energy measure without follow-up audit to determine whether the savings happened or not.

The Non-Utility Plan net throughput disincentive (NTD) is <u>not</u> <u>based</u> on the NSB model relied on by the Utility Plan. Natural Resources Defense Council (NRDC) has <u>missed</u> this critical difference in its brief by wrongly asserting "The Staff/OPC TD-NSB Mechanism is Flawed."[18] Missing such a huge difference shows that NRDC does not understand the difference between the NTD proposed in the Non-Utility Plan and the TD-NSB of the Utility Plan.

The Non-Utility Plan NTD is intended to limit Ameren's recovery to only actual lost revenues. Unlike the Utility Plan TD-NSB, the Non-Utility Plan NTD does not rely on complex present-valuing techniques and does not require a true-up due to rate case timing intervals.

Further, Ameren is crying wolf by misconstruing an accounting requirement[19] to coerce the Commission to approve its overly rich TD-NSB revenue collection mechanism. The Commission should not be persuaded by such misdirection. Understandably Ameren wants to protect its TD-NSB because it provides such a huge

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[18] Initial Post-Hearing Brief of Natural Resources Defense Council, contents page and pp. 10-11.
[19] See Staff's Initial Brief for detailed discussion of Ameren's alleged accounting concerns regarding the Non-Utility Plan's NTD proposal, pp. 21-26.

revenue stream to its shareholders.[20] The Commission should approve the Non-Utility Plan because its Net Throughput Disincentive safeguards customers from over-collection by requiring Ameren's lost revenues be supported by energy efficiency savings that are measured and verified by retrospective EM&V.[21] Ameren should be financially indifferent as between demand-side and supply-side initiatives and should collect from customers only what it is due.

<u>Throughput Disincentive: Utility Plan "Throughput Disincentive-Net Shared Benefits" vs. Non-Utility Plan "Net Throughput Disincentive"</u>

Staff recommends that the Commission adopt the Non-Utility Plan because it presents a fair and reasonable resolution to the issue of the lost revenue recovery. Non-Utility Plan provides a balance of incentivizing the Company, as discussed below; providing recovery of program costs, as discussed above; and removing the disincentive inherent in energy efficiency. It also ensures that consumers are not bearing more of the cost of the programs than is warranted under the statute. While Ameren Missouri's initial brief makes a lot of claims unsupported by evidence or argument, this section of Staff's reply will answer the concerns Ameren raised.

Ameren Missouri's proposal for Cycle 2, both in its initial filing and in its Utility Plan, mirrors what was approved in Cycle 1, but with lower savings targets at a much higher cost. Ameren Missouri attempts to emphasize the success of Cycle 1[22], but in doing so, it neglects to mention the significant profit that resulted. This profit arose in great part due to the throughput disincentive mechanism in place, which used deemed

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[20] The Post-Hearing Brief of the Office of Public Counsel, p. 2, which discusses in detail how Ameren Missouri's Cycle 1 MEEIA program allowed Ameren to over-collect $29,429,712 from its throughput disincentive component (TD-NSB) for years 2013 and 2014.

[21] Sect. 393.1075.3(3)

[22] Ameren Initial Brief, p. 3.

values, resulting in tens of millions of dollars of over-collected lost revenue. Ameren Missouri states that the revised plan "allows the Company to value demand-side resources equally with investments in traditional supply and delivery infrastructure."[23] Although Ameren Missouri does not explain how the plan would allow it to value demand and supply side resources equally, it is clear why the Company would want to continue with a second cycle that mirrors the first cycle, in which it earned so much money from its TD-NSB.

While promoting a greater interest in demand-side resources does not sound inherently bad, Ameren Missouri's incentive under its TD-NSB mechanism is to promote energy efficiency programs that have high *deemed* savings, that result in much lower *actual* savings. This would allow the Company to collect a much higher amount of "lost revenue" than it actually incurred. The Non-Utility Plan, on the other hand, focuses on trying to provide Ameren Missouri with an amount of recovery for lost revenues that equals the actual lost revenue amounts.

In the grand scheme of Ameren Missouri's planned total cost of programs, throughput disincentive and performance incentive of $268 million, the one-third of Ameren Missouri's estimated throughput disincentive that is the subject of the utility objection is a relatively small amount.[24] Even so, the NTD proposed in the

[23] *Id.*

[24] Per Schedule JAR-1 to Rogers Rebuttal to Supplemental testimony, the estimated throughput disincentive amount under the Utility Plan is approximately $60 million (discounted dollars) over the three year cycle, and under the direct filing, the estimated throughput disincentive amount was approximately $44 million over the three year cycle. The programs under the Non-Utility Plan are more extensive than the direct filing, but do not include the CFL program that accounts for much of the increase in the Utility Plan projected kWh savings over the direct filing. Therefore, annually, the projected throughput disincentive to be recovered is in a range of approximately $14.67 - $20 million. Under the Non-Utility Plan throughput disincentive primary approach - assuming that program implementation mirrors the programs proposed – Ameren Missouri would annually recover $9.68-$13.2 million in real time. Ameren Missouri would have the opportunity to collect an additional $9.68-$13.2 million for each program year in the following program year, for total recovery of $19.36 – 26.4 million, depending on the program

Non-Utility Plan has the potential to provide more recovery for throughput disincentive than the Company would receive under its own proposed TD-NSB mechanism. Ameren Missouri's argument first ignores the upside of 100-133% recovery that is offered under the Non-Utility Plan. It then focuses on the potential 1-year delay in recovery under the primary approach, while ignoring the 66% recovery guaranteed under the Non-Utility Plan. Simply put, Ameren Missouri complains of a potential year delay in booking about $5 million of about $15 million annually under the Non-Utility Plan, but it ignores the opportunity under the Non-Utility Plan to recover an additional approximately $5 million, if the programs are found to be more effective than initially assumed. This additional recovery is not available under the Utility Plan.

Using the TD-NSB mechanism under the Utility Plan, if the program costs for a particular measure were to increase, Ameren Missouri would actually be disincented to promote that measure, because there would be a corresponding relative decrease in the amount of TD-NSB recovery.[25] If program costs go up as a whole because Ameren Missouri is installing more measures, throughput disincentive recovery will increase.[26] So, if program costs go up on a particular measure, even though that measure may still be cost effective, Ameren Missouri would be disincented to promote that program, because it would reduce the TD-NSB recovery.

From Staff's perspective, as long as a measure is cost effective, Ameren Missouri should promote it. The net throughput disincentive should be the

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effectiveness determined through EM&V – again, assuming that actual program implementation mirrors the programs proposed.

[25] If the same number of measures is installed, there will be the same number of benefits for a greater cost, so the NSB "pie" gets smaller. Ameren Missouri would get the same percent of a smaller total, for a smaller Ameren Missouri share.

[26] If more measures are installed, there will be both more benefits and more costs, so the NSB "pie" gets bigger. Ameren Missouri gets the same percent of a bigger total, for a bigger share.

result of program efficacy, not program costs. Ameren Missouri's approach ties the two, which confuses the price signals received by the Company. The Non-Utility Plan's true-up of NTD at the end of each program year allows for recovery of throughput disincentive dollar-for-dollar. This would prevent the disincentive to promote energy efficiency in the event program costs rise.

The Non-Utility Plan, by virtue of its true-up mechanism, seeks to allow a much more accurate recovery of throughput disincentive than does the Utility Plan. While an over-estimation of throughput disincentive could still result in over-recovery under the Non-Utility Plan if the actual number is less than two-thirds of the estimate, an under-estimation would cause less harm to Ameren Missouri than it would under the Company's own proposal. The Non-Utility Plan allows recovery of up to 133% of estimated values if supported by EM&V, while the Utility Plan would only allow recovery of 100%, regardless of the actual lost revenue amount. By including the true-up at the end of each program year, the Non-Utility Plan seeks to allow recovery for throughput disincentive dollar-for-dollar.

The Missouri Division of Energy (DE) chief criticism of the Non-Utility Plan appears to be based on DE's factual misunderstanding of the Non-Utility Plan. DE appears to be under the misimpression that the Non-Utility Plan limits net throughput recovery to a percentage of the utility's (low) initial estimate of kWh savings for the portfolio as a whole.[27] This is simply not accurate. The Non-Utility Plan calculates the net throughput disincentive based on retrospective EM&V for each measure, subject to limited true-up.

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[27] See DE Initial Brief, p. 11, stating, "The Non-Company Agreement violates MEEIA statute by failing to reimburse the Company for revenues lost from demand-side measures past the energy savings target."

Ameren Missouri discusses rate case timing in its initial brief, stating that the Company's modified plan makes it unlikely that any over or under recovery due to rate case timing will occur.[28] Interestingly, Ameren Missouri does not seem to be concerned that deemed values, as it proposes for the TD-NSB, may cause over or under recovery as well. Further, Ameren Missouri discusses that rate case timing is just one of many assumptions that must be made and that draw criticism related to the TD-NSB proposed in the Utility Plan.[29] It attempts to address the concern by modifying its proposal using a two-tiered approach. This approach is still complicated and unnecessary and does not actually reduce the number of assumptions required for the TD-NSB calculation.[30] The Non-Utility Plan eliminates the need to address the assumptions about rate case timing, marginal energy rates, marginal avoided cost rates, or marginal impacts to off-system sales and transmission-related charges, because it would allow throughput disincentive recovery as incurred based on measurement and verification instead of on an accelerated basis.[31]

Ameren's TD-NSB Accounting Issue Lacks Merit

As already noted in Staff's initial brief, Ameren Missouri's position on its presumed TD-NSB "accounting issue" is entirely based on unsupported interpretations of generally accepted accounting principles expressed by its two witnesses, in addition to hearsay accounts of discussions allegedly held with representatives of various external auditing firms. It is telling that Ameren Missouri has not provided any evidence to support its position on this matter that was not produced or created under the

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[28] *Id.* at p. 17.
[29] *Id.* at p. 18.
[30] Ex. 703, S. Kliethermes Rebuttal to Supplemental Testimony, p. 21.
[31] *Id.* at p. 22.

Company's control in the context of Ameren Missouri's current or preceding MEEIA applications. In other words, *there has been no external documentation provided from any third-party, independent source outside the context of these applications that would serve to verify or confirm Ameren Missouri's accounting claims in this case*. Under normal evidentiary standards, that is not good enough to support a Commission decision in its favor.

On page 8 of its initial brief, Ameren Missouri indicates that it received advice from its own external accounting firm, PwC, indicating that Ameren Missouri would be unable to record lost revenues as and when the energy efficiency programs are operated. However, this, too, is purely hearsay. Ameren Missouri did not offer the testimony of any representative of PwC in this proceeding, nor did it provide any documentation from PwC in support of this hearsay allegation. The PwC documentation that was actually placed in the record by Staff in this proceeding contradicts Ameren Missouri's claims regarding its external auditor's stance on interpretation of ASC 980-605-25. PwC's "Guide to Accounting for Utilities and Power Companies" (Exhibit 716) contains a section regarding PwC's guidance on how the terms of ASC 980-605-25 should be interpreted and implemented. After providing the text of this pronouncement, PwC summarized its effect and intent by stating, "These conditions establish a high threshold to recognize revenue *prior to billing and collecting amounts from customers* [emphasis added]." This statement clearly indicates that Ameren's external auditor believes that ASC 980-605-25 is intended to govern utilities' recognition of throughput disincentive revenues prior to their billing and collection from customers. As such, the guidance offered by PwC in this document fully supports

Staff's interpretation of the GAAP applicable to throughput disincentive recovery, and it does not support Ameren Missouri's claims on this point.

Although Ameren Missouri did not present any evidence in this case from PwC to support its hearsay contentions that its external auditors supported its accounting claims in this case, the Company did file surrebuttal testimony from Mr. Stephen Ditman, a PwC partner, in its prior MEEIA application, Case No. EO-2012-0142.[32] Nowhere in Mr. Ditman's testimony filed in that case did he mention the unique claim Ameren Missouri has made in its current MEEIA application, that GAAP precludes the recording of MEEIA receipts as revenues from customers when such recoveries are made subject to a retrospective true-up, even when such recoveries had been collected in cash by the utility. That argument is new to this proceeding.

In this proceeding, Ameren Missouri has presented no evidence from accounting literature or from the orders of public utility commissions in other jurisdictions that provide any support for its interpretation of the GAAP pronouncements upon which it relies. As pointed out in Staff's initial brief, Ms. Barnes and Mr. Hoffman argue that the requirements of ASC 980-605-25 forbid utilities to recognize any throughput disincentive cash receipts from customers as revenue at the time when the amounts are billed and received from customers, if such amounts are subject to later updating through a retrospective true-up process. Of course, if such interpretation was accurate, this would apply not only to Ameren Missouri, but also to any utility collecting throughput disincentive amounts in rates subject to later true-up.[33] Accordingly, one would expect this point to be raised by utilities across the country, and this has not been done.

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[32] Ex. 717.
[33] Tr. Pp. 493-494.

No utility, in the context of proposals to recover throughput disincentive, has raised these accounting requirements or posed them as a roadblock to allowing utilities relief for their lost revenues including true-up of projected values used in setting rates.[34]

Potential sources of independent evidence that could have been used to corroborate Ameren Missouri's accounting claims should not have been difficult for the Company to locate if such evidence actually exists. In fact, likely sources can easily be found even within Ameren Missouri's filings in this case. Appendix C to Ameren Missouri's *2016-2018 Energy Efficiency Plan* dated December 22, 2014[35] is a document entitled "State Electric Efficiency Regulatory Frameworks," published by the IEE. Pages 6-12 of this report feature summary descriptions of various states' applications of lost revenue recovery or "decoupling" policies. A brief perusal of this information shows that, at a minimum, the states of Arkansas, Montana, North Carolina, South Carolina, and South Dakota appear to have ordered lost revenue recoveries to be subject to true-up procedures in some fashion. Ms. Barnes did not take the time to review the policies of these jurisdictions to see whether similar concerns had been raised regarding the accounting implications of these true-up mechanisms.[36] However, Staff witness Oligschlaeger performed that research. He found <u>no</u> evidence that concerns alleged by Ameren Missouri in this case were ever raised in the context of lost revenue recovery policy in these or other jurisdictions which he reviewed.[37]

Ameren Missouri's claims that the MEEIA statute is intended to shield it from any financial detriment whatsoever is meritless. Such a stance is not necessary to put

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[34] Ex. 707, M. Oligschlaeger Rebuttal to Supplemental Testimony, p. 4, lns 5-13.
[35] Ex. 100.
[36] Tr. 484.
[37] Ex. 707, M. Oligschlaeger Rebuttal to Supplemental Testimony, p. 5; Tr. 847-848.

demand-side initiatives on an “even playing field” with ratemaking for supply-side initiatives.[38] Staff does agree that under the primary NTD proposal in the Non-Utility Plan, Ameren Missouri will be unable to book one-third of its revenues until a later point in time for lost revenue recovery above the two-thirds it would receive in rates. Staff contends that holding back one-third for later recovery subject to EM&V is reasonable and will maintain the “even playing field” sought under MEEIA. The lack of credible evidence supporting the Company’s accounting concerns makes it more than reasonable to assume that even the alternative NTD recovery approach included within the Non-Utility Plan[39] will not result in any detrimental impact on the Company’s earnings due to lost revenues.

Performance Incentive: The Non-Utility Plan Approach Is Best

A performance incentive as defined by the MEEIA statute is designed to offer an earnings opportunity to utility shareholders that compensates them for the revenue lost as a result of reduction in supply-side investments. Supply-side investments are necessary to meet capacity needs as they increase and naturally produce revenue for shareholders. A performance incentive is not a reward, and should never be a guarantee. However, an ill-constructed performance incentive, such as the one proposed in the Utility Plan, could be both a reward and a guarantee if implemented.

The Utility Plan proposes a net shared benefits model for the performance incentive and claims to have ambition for party collaboration to determine more energy saving methods throughout the life of MEEIA Cycle 2. However, using the net shared benefits model, Ameren Missouri (Company) is incentivized not to increase

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[38] Ex. 706, M. Oligschlaeger Supplemental Direct Testimony, p. 7.
[39] 100% recovery of estimated NTD, with 1/3 of that amount subject to true-up.

either kWh or kW savings, but to find a way to lower program costs, to the utility's benefit, during implementation of the programs. This raises net shared benefits; however it also raises Ameren Missouri's own cash payout under the Utility Plan performance incentive while providing the same or only marginally higher kWh savings.[40] Due to the low program participation rates and the lack of mechanisms to increase participation in the Utility Plan, this equates to few ratepayers benefitting under the Utility Plan.

Cycle 2 is Not Like Cycle 1

Throughout the course of the evidentiary hearings, Ameren Missouri presented the application for MEEIA Cycle 2 as if it were a continuation of Cycle 1.[41] In its initial brief the Company comments, "In implementing the first wave of energy efficiency following the General Assembly's adoption of MEEIA, the Company has grown an organization capable of delivering highly-effective programs to customers with the assistance of contractors operating within its service territory through a network of trade allies. The Company has been clear that a consistent framework for energy efficiency is necessary for this energy efficiency organization to remain stable and maximize benefits for customers."[42] However, the factors surrounding Cycle 2 are very different and Ameren Missouri itself states in its brief that, "savings targets were substantially lower than those associated with Ameren Missouri's MEEIA Cycle 1 plan because of three factors: increased federal efficiency standards, 2013 EM&V measure level savings

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[40] See Exhibit 712, Schedule JAR-1, lines u, v, r and s. Beyond the net shared benefits concerns, the expected outcome of increasing the energy savings goal in the Utility Plan is to increase net benefits for program participants and Ameren shareholders and to decrease net benefits for non-participants.
[41] The results of Cycle 1 are not even yet known and a complaint is pending before the Commission regarding the updating of the annual net shared benefits amount. See Staff's initial brief p. 45, footnote 107.
[42] AMEREN MISSOURI initial brief p. 4.

estimates and lower avoided cost projections."[43] The Cycle 1 plan was projected to produce significant net benefits for all customers – estimated at a 2.07 benefits to cost ratio for residential customers who do not participate in programs - whereas, the benefit to cost ratio for these same customers in Cycle 2 is now a mere 1.06.[44] The dramatic difference in environment from Cycle 1 to Cycle 2 is clear, and the ratepayers bear the risk as the benefits decrease.

<u>An Earnings Opportunity Is Not A Guaranteed Payday</u>

It is important to note that Ameren Missouri uses both the terms "incentive opportunity"[45] and "earnings opportunity"[46] throughout its brief. As discussed in Staff's initial brief, the purpose of the performance incentive is often misconstrued and should be recognized to be an earnings opportunity for the utility and not a reward.[47] Ameren Missouri implies the Commission is required to provide an earnings opportunity for any investment the Company makes into energy efficiency, [48] despite that fact that under either plan Ameren Missouri will not invest a single shareholder dollar in energy efficiency, due to the program cost recovery provided through Rider EEIC, and consistency of sales revenues through the recommended Non-Utility Plan throughput disincentive mechanism.[49]

Ameren Missouri quite clearly sees it as the Commission's duty to provide ratepayer dollars for a performance incentive, whether or not MEEIA Cycle 2 has any impact on future supply-side investment opportunities. Accordingly, the earnings

[43] AMEREN MISSOURI initial brief pg 14-15.
[44] See Exhibit 712, Schedule JAR-1, line s.
[45] AMEREN MISSOURI initial brief pg 25.
[46] AMEREN MISSOURI initial brief pg 25.
[47] Staff's initial brief pg 37.
[48] AMEREN MISSOURI initial brief pg 25.
[49] See Staff's initial brief pg 40-41.

opportunity is low-hanging fruit under the Utility Plan. In contrast, the Non-Utility Plan provides Ameren Missouri a risk-free earnings opportunity for Ameren Missouri's successful promotion of MEEIA Cycle 2. If Ameren Missouri delivers a MEEIA Cycle 2 that uses current demand-side programs to reduce the need for future supply-side resources, then in years 5 and 6 the Non-Utility Plan calls for ratepayers to provide shareholders with earnings. Those demand-side-related earnings will be provided without: (1) shareholder investment, (2) Construction Work In Progress (CWIP) delay, (3) construction risk, (4) ongoing liabilities, (5) delay in need for investment, (6) sizing issues, or other additional factors placing risk on supply-side investments.

Energy Savings Do Not Produce Long-Term Results

The Missouri Division of Energy (DE) throughout its argument makes clear that it misunderstands the connection between demand-side savings and supply-side investments. "Most critically, rejection of the Company Agreement would lead to the need for increased future capacity additions at greater expense to the Company's ratepayers, as well as a failure to value supply-side and demand-side resources on an equal basis."[50] [It] "will offset long run capacity increases."[51] It is the kW demand savings encouraged by the Non-Utility Plan that will affect the necessary capacity of Ameren Missouri in the future, not the energy savings as proposed by the Utility Plan. DE misinterprets the proposed energy savings as affecting the need for capacity into the future, but the capacity will not experience meaningful change from the lighting programs and other proposals of the Utility Plan's Cycle 2 portfolio.

[50] DE initial brief pg 2.
[51] DE initial brief pg 6.

As discussed in Staff's initial brief, Ameren Missouri's proposed Cycle 2 under the Utility Plan will not result in supply-side investment savings.[52] Ameren Missouri fails to consider that the particular kWhs that were added to savings goals in the Utility Plan when it was modified from the original application have little to no impact on future supply side resource needs – the impetus for the MEEIA performance incentive earnings opportunity.[53] When Ameren Missouri discusses the increase in savings goals, [54] it further neglects to mention that the goals in the direct-filed portfolio were drastically lower than has been suggested as reasonable by any other party.

The provisions of the Utility Plan fall short of providing any meaningful effect on long-term supply-side investment opportunities and are likely to provide little more than a windfall to the Ameren Missouri shareholders.

Demand Savings Basis of Non-Utility Plan Better for Performance Incentive

The only way to provide long-term effects through energy efficiency programs in the current market is to promote demand-side savings investments through the performance incentive. Even DE admits that it makes sense to promote demand savings investments by the Company with a PI.[55] Staff agrees, as do the signatories to the Non-Utility Plan, that it is important because it encourages meaningful and lasting supply-side impact. At the same time that Utility Plan signatory parties such as DE and

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[52] See Staff's Initial Brief pg 38, stating "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."

[53] The kWhs added under the Utility Plan are (1) lighting, which has minimal impact on supply-side, and (2) CFL lighting, which is only shifting to one year earlier implementation, thus having no impact on supply-side resources that will be required over the planning horizon. Moreover the addition of the government program provision does not actually add any kWh savings; it simply creates an agreement between the signatories that they will not consider government participants to be free riders.

[54] AMEREN MISSOURI initial brief pg 15.

[55] "…it conceptually makes sense to promote demand savings investments by the Company with a PI," DE initial brief pg 12.

United for Missouri make grand statements that demand savings are unimportant to the benefits of energy efficiency, both parties include several statements in their briefs regarding incidental demand savings that may result from the emphasis on energy savings proposed by the Utility Plan. The parties mention these incidental savings in a half-hearted attempt to prove that their plan can provide demand savings, even with the awareness that the savings will not provide meaningful results. "Some demand savings" is an insufficient amount to have a true effect on Ameren Missouri's future capacity requirements.[56]

The Non-Utility Plan promotes an incentive for Ameren Missouri to achieve demand-side savings through its MEEIA Cycle 2 portfolio. As MEEIA is a permissive statute that grants a utility autonomy over the implementation of its portfolio, Ameren Missouri will be able to mix and match programs[57] as it implements Cycle 2. If the portfolio proposed for Cycle 2 were implemented exactly the same as the portfolio studied in the realistic achievable potential (RAP) then the small potential for demand savings that DE is proposing could be true,[58] but the portfolio has been modified. Staff is not calling for implementation of the RAP portfolio; it merely acknowledges that the portfolio as proposed in the Utility Plan will not achieve the same demand savings that the RAP study proposed. The parties to the Non-Utility Stipulation tweaked their proposed Cycle 2 to adjust for the modifications from RAP and still achieve meaningful savings.

[56] See Staff's initial brief pg 41, "Significant demand-side impacts are necessary to completely avoid a future supply-side investment in a large generation facility."
[57] Staff's initial brief pg 33.
[58] DE initial brief pg 13.

In its argument, NRDC acknowledges the goal of the demand based Performance Incentive stating "Staff witness Rogers admitted on the stand that deferring or avoiding new supply-side additions was a benefit to all customers, as were public health benefits…" The Non-Utility Plan demand-based performance incentive seeks to incent lasting reductions in peak demand. Unfortunately, NRDC's analysis is flawed similar to DE's when it later alleges that deferring a supply-side investment provides proof that demand-side savings is inappropriate.[59] The demand-based savings are the only element through the performance incentive that allows deferral of supply-side additions into the future.

NRDC continues to attempt to justify the Utility Plan's energy savings over the Non-Utility Plan's demand savings.[60] Again NRDC's analysis is flawed because Ameren Missouri does not have an inherent incentive to pursue demand savings. DE too misunderstands the connection between demand-side savings and supply-side investments.

A reduction in demand savings results in less need for capacity and a reduction in demand for capacity reduces the need for new energy plants, which produce earnings for the shareholders based on new plant in service. Therefore, the purpose of a performance incentive based on reducing kW demand is to provide an earnings opportunity with demand-side programs and to reduce any incentive the Company may have to prefer earnings opportunities it would acquire from supply side investments. The Non-Utility Plan both meets the necessity for reduction of Ameren Missouri's desire to

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[59] NRDC initial brief pg 15.
[60] NRDC initial brief pg 14.

make supply-side investments and encourages further savings through further efforts invested into the Cycle 2 programs.

Caps on Savings Targets are Reasonable

DE criticizes the Non-Utility Plan for capping the demand-related performance incentive earnings opportunity at 1,000,000kW, or $72,358,000[61] However, DE fails to note that the 1,000,000 kW savings level provided for in the Non-Utility Plan is more than 8 times the amount of savings currently projected under any portfolio. It is unreasonable to make provisions for savings above 8 times the current proposed levels when we cannot even ensure the ability to have meaningful energy efficiency in the present market.

Use of Delphi Panel to Reasonably Estimate Achievable Net Benefits

As to the Delphi Panel NRDC states, “This cumbersome and supposedly compulsory process will not work. By contrast, Ameren has expressed a willingness to engage in the simpler process of the Ameren/NRDC Stipulation—indeed a “hope” that additional energy savings can be identified.”[62] The Delphi Panel as proposed in the Non-Utility Plan is only an enhancement to the existing savings targets and proposed performance incentive. It is a mechanism to determine if further savings can be accomplished in the market based on a demand-side savings approach. However, if the Commission chooses to approve a performance incentive mechanism based on a percentage of net shared benefits as proposed in the Utility Plan, the Delphi Panel becomes absolutely necessary for the calculation of the throughput disincentive and the

[61] DE initial brief pg 12.
[62] NRDC initial brief pg 6.

performance incentive. Neither the throughput disincentive nor the performance incentive can be reasonable to ratepayers unless further savings potential is identified.

DE quotes portions of Staff witness John Rogers's statements at the evidentiary hearing relating to a rate impact study of any additional energy saving programs identified through the Delphi Panel. DE's claims that "beneficial to all" includes potential for improved public health outcomes such as reduced healthcare costs[63] are valid comments on benefits that result from the reduced emissions of fossil fuel power plants due to successful energy efficiency programs. However, the benefits of these reduced emissions are already considered and captured in the calculation of the avoided cost of energy.[64]

Conclusion

The signatory parties to the Utility Stipulation provided no basis to ignore the relationship between a MEEIA "performance incentive" and a reduction in supply-side earnings opportunity. The earnings opportunities provided by the Non-Utility Plan seek to correct the substantial shortcomings of the Utility Plan's portfolio design and encourage Ameren Missouri to promote energy efficiency programs that meaningfully impact supply-side investment requirements. The Non-Utility Plan's performance incentive is designed to provide shareholders with risk-free earnings in exchange for the utility's promotion of demand-side programs "in a manner that sustains or enhances utility customers' incentives to use energy more efficiently."[65]

[63] DE initial brief pg 7.
[64] Ex. 100.
[65] AMEREN MISSOURI initial brief pg 1.

<u>Ex Parte Letters from Ameren's Trade Allies are Irrelevant to Deciding whether the Utility Plan complies with MEEIA and should not be considered by the Commission</u>

Shortly after the three day evidentiary hearing ended, the Commission received nine (9) ex parte letters[66] about this contested case from Ameren's trade allies supporting MEEIA programs. These letters are from parties not in this case and are outside the record evidence of the case as defined by Commission Rule 4 CSR 240-4.020. Subparagraph (7) prohibits commissioners from considering these ex parte letters:

> *Unless properly admitted into evidence in subsequent proceedings, an extra-record communication shall not be considered as part of the record on which a decision is reached by the commissions, a commissioner, or presiding officer in a contested case.*

These letters are <u>not</u> relevant to the decision before the Commission as to whether the Utility Plan is MEEIA compliant and whether the resulting Utility Plan MEEIA charge would be just and reasonable. Also, extra record communications may be viewed as an impermissible attempt to persuade the Commission. A decision ordered by the Commission must be supported by competent and substantial evidence upon the whole record. *State ex rel. Rice v. Public Service Com'n, 220 S.W.2d 61, 64*. Extra record communications from ex parte letters are not to be considered by the Commission.

[66] Nine (9) ex parte letters are contained in the Notices of Communication filed by the Commission in EFIS Doc. No.'s 164, 179, 230, 232, and 245.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 26th day of August, 2015.

/s/ Robert S. Berlin