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**

INITIAL POST-HEARING BRIEF OF
NATURAL RESOURCES DEFENSE COUNCIL

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Introduction

Natural Resources Defense Council (NRDC) supports pursuit of all cost-effective energy efficiency in the Ameren service territory as envisioned by the MEEIA statute. NRDC also strongly supports the timely recovery of program costs, addressing the throughput disincentive in a way that ensures neither the Company nor its customers are hurt financially from pursuit of efficiency, and providing a reasonable performance-based earnings opportunity to encourage exemplary performance and capture of all cost-effective efficiency – as envisioned by MEEIA statute.

The benefits of pursuing energy efficiency as a resource are well documented and include: reduced consumer bills; creation of good local jobs across a large range of incomes and education levels; avoidance or deferral of expensive, risky and often uncertain capital infrastructure improvements; improvements in public health and the environment; and the cheapest and easiest way to comply with regulatory requirements such as the U.S. EPA's proposed Clean Power Plan and taking advantage of the related Clean Energy Incentive Program for early emission reductions associated with energy efficiency.

While NRDC supports the adoption of a reasonable mechanism to address the Company's throughput disincentive, it believes that a revenue adjustment mechanism (decoupling mechanism) is the best way to address the throughput disincentive. The potential for a mechanism of this kind is incorporated in the MEEIA statute, and this issue will be considered in a recently opened docket, AW-2015-0282. In approving a throughput disincentive mechanism in this case, we encourage the Commission to indicate this is a solution which could be modified with a more comprehensive decoupling approach following the decoupling docket.

While NRDC believes both non-unanimous stipulations before the Commission fall short of ensuring an effort to achieve all cost-effective efficiency, we support the non-unanimous stipulation signed by Ameren and NRDC (“Ameren/NRDC Stipulation”) as a reasonable compromise that offers substantially more savings and benefits to customers than the alternative stipulation proposed by PSC Staff and the Office of Public Counsel (“Staff/OPC Stipulation”). In addition, the Ameren/NRDC Stipulation allows for the opportunity, through a collaborative process, to substantially increase these goals and support pursuit of all achievable efficiency in the long term. Finally, while there are a number of similarities between the two stipulations, there are a number of flaws with the Staff/OPC Stipulation that would create strong disincentives for Ameren to pursue all achievable cost-effective efficiency. Below we discuss these issues in more detail.

I. **MEEIA Supports only the Ameren/NRDC Stipulation**

The Commission has before it two competing position statements, each offering a complete resolution of the issues. The vast majority of the parties have signed onto one or the other of these non-unanimous stipulations. The June 30 stipulation is signed by Ameren, NRDC, Division of Energy, KCP&L, GMO and United for Missouri. The Amended Non-Unanimous Stipulation of July 8 is signed by Staff, OPC, MECG, MIEC and Renew Missouri, and supported by the Sierra Club.

The Staff/OPC stipulation prescribes a MEEIA Cycle 2 Portfolio, a Throughput Disincentive Mechanism and a Performance Incentive, and asks the Commission to approve this plan over the company’s objection. This is a non-starter. MEEIA is a voluntary statute: “The commission shall **permit** electric corporations to implement commission-approved demand-

side programs proposed pursuant to this section…" Sec. 393.1075.4, RSMo. In ruling on MEEIA plans, "The commission shall approve, approve with modifications acceptable to the electric utility, or reject such applications…" 4 CSR 240-20.094(3).

Under the statute and rules, the Commission may reject a plan but cannot impose one on the company that the company finds unacceptable. That would be the effect of adopting the Staff/OPC Stipulation.

Of course the Commission may propose modifications or reject the company's plan. NRDC will now explain why the Ameren/NRDC Stipulation comes closer to fulfilling the goals of MEEIA and why the Staff/OPC Stipulation contains features of questionable motivation and worth.

II. NRDC supports the Ameren/NRDC Stipulation of June 30, 2015

A. It comes closer to achieving "all cost-effective demand-side savings."

While the Ameren/NRDC Stipulation does not guarantee pursuit of all cost-effective efficiency, it does lock in substantially more energy savings—583,000 MWh[1]—and net benefits for ratepayers than the savings goals originally proposed by Ameren (426,000 MWH, down from 793,000 in Cycle 1[2]). In addition, it requires much greater savings than the Staff/OPC Stipulation (459,000 MWh[3]).

For 2016 (the first year of the MEEIA Plan), the savings goals are 43% higher than those put forth in the Staff/OPC Stipulation. This brings the Ameren/NRDC Stipulation much closer to

[1] Ameren/NRDC stipulation, pp. 3–4.
[2] Exhibit 100, 2016–2018 MEEIA Plan, pp. 5–6).
[3] Staff/OPC stipulation, Appendix A.

achieving all cost-effective efficiency. Over the entire three-year plan period initial minimum savings goals are 27% higher than those in the Staff/OPC Stipulation. Because the portfolio of savings is clearly cost-effective and cheaper than alternative supply-side solutions, for this reason alone the PSC should approve the Ameren/NRDC Stipulation as it will provide substantially more net benefits and bill savings to customers, and ensure higher and broader participation levels.

While the initial minimum goals committed to by Ameren in its Stipulation are already 27% higher than the Staff/OPC Stipulation, both stipulations allow for further increases in goals for 2017 and 2018 through a collaborative process. This opportunity to increase savings, potentially by as much as 300 to 400 GWh for 2017 and 2018 as called for in the Ameren/NRDC Stipulation (pages 9–10) is critically important. Further, it enables the introduction of new program design approaches that can significantly increase participation rates and reduce the per-unit cost of acquiring the energy savings, thereby benefitting all customers.

Flaws in the Staff/OPC Stipulation

While both stipulations in theory allow a process for this collaborative investigation and an increase in savings goals for 2017 and 2018, there are some important distinctions between them that render the Staff/OPC Stipulation process much less likely to succeed. First, because the 2016 goals are already 43% higher in the Ameren/NRDC Stipulation, this provides a significant backstop if the collaborative process does not result in much higher goals. Further, because Ameren will already have ramped up its 2016 implementation by 43% (compared to the Staff/OPC Stipulation), they will be much better prepared to agree to and achieve higher

goals in 2017 and 2018 than they would under the much lower 2016 goals in the Staff/OPC Stipulation.

The "Delphi panel"

Second, the Staff/OPC Stipulation (p. 4) requires an independent mediator, and empowers this mediator to unilaterally make final recommendations to the Commission on future goals. NRDC believes that this process will only be successful if it is truly collaborative and consensus can be reached on goals that Ameren will accept and believes it can achieve. If the mediator establishes goals that Ameren is not willing to agree to, this will likely result in further litigation at best, and possibly Ameren's decision to simply discontinue programs indefinitely.[4] Neither of these options is in the best interests of Ameren customers.

The mediator would be selected through a request for proposals, a process that could delay the work for months.[5] Staff is the only party that would have input into the RFP; broader participation is desirable.[6] The mediator would convene a panel of experts—a "Delphi panel"[7]— to make recommendations and issue a report. Comments may be filed, and the Commission may then issue an order adjusting the kWh savings.

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.[8]

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[4] Ameren witness Barnes, T. II, 501, 515–6.
[5] Ameren witness Voytas, T. 249–50.
[6] Sierra Club witness Woolf, T. II, pp. 417–8
[7] OPC witness Marke, T. II, 623, 660.
[8] Ameren witness Laurent, T. II, 316–7.

Incentive vs. disincentive

Third, and perhaps most important, the Staff/OPC Stipulation is already set up to fail because it builds in a very strong financial disincentive for Ameren to ever agree to goals higher than those it has already committed to in the Ameren/NRDC Stipulation. Under traditional rate regulation, a utility that offers efficiency programs will lose sales, resulting in an inability to fully recover fixed costs between rate cases. This is the "throughput disincentive" to doing efficiency that MEEIA aims to overcome.[9]

The Staff/OPC Stipulation throughput disincentive mechanism puts an absolute cap on net lost revenue recovery at 133% of the "initially projected savings."[10] As a result, any significant savings increase above what Ameren has already committed to would result in a clear and significant short-term financial loss to the Company. This perverse incentive almost guarantees Ameren will not agree to goals higher than it has already committed to.

In contrast, the Ameren/NRDC Stipulation allows for the continued recovery of the throughput disincentive based on actual projected net lost revenue, as well as a performance incentive based on net benefits that will provide additional earnings opportunities for Ameren to maximize capture of all cost-effective achievable efficiency.

Sierra Club witness Tim Woolf testified that the Ameren/NRDC Stipulation performance incentive mechanism is flawed because it caps earnings opportunities based on the existing goals in the Ameren/NRDC Stipulation.[11] However, Mr. Woolf is mistaken, as was made clear by the testimony of NRDC witness Philip Mosenthal. In fact, the Ameren/NRDC Stipulation

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[9] Woolf, T. II, 440–41; Laurent, T. II, 376.

[10] Staff/OPC stipulation, p. 8, ¶ 6.E.ii; Ex. 20,Supplemental Rebuttal Testimony of Hyman, p. 9; Mosenthal, T. III, 690–92.

[11] Woolf, T. II, 464–5.

performance incentive allows continued earnings of 16.86% of net benefits **for all savings above 130% of goals, with no cap**.[12] Further, the 130% cap **on the percent of net benefits** Ameren can earn already represents savings far in excess of the Staff/OPC Stipulation goals. The Ameren/NRDC Stipulation already has locked in goals that are 127% of the Staff/OPC Stipulation over the entire plan period. As a result, Ameren has a clear but fair incentive to pursue all cost-effective efficiency beyond any minimum goals, while sharing the vast majority of net benefits with its customers.

NRDC supports the reasonable and accurate recovery and accounting of net lost revenue using a throughput disincentive mechanism as a temporary solution to the financial disincentive to efficiency Ameren would otherwise face. The Ameren/NRDC Stipulation provides such a mechanism. However, we believe a full decoupling mechanism that ensures future utility revenue is decoupled from companies' electric sales would be far preferable and fairer to ratepayers, as indicated in NRDC witness Ashok Gupta's testimony.[13]

B. The Staff/OPC TD-NSB Mechanism is Flawed

The Staff/OPC Stipulation's TD-NSB (throughput disincentive-net shared benefits) mechanism differs in some fundamental ways from that proposed in the Ameren/NRDC Stipulation. It subjects net lost revenue recovery to a true-up based on *ex-post* evaluation, monitoring and verification (EM&V) results. NRDC is not opposed to this approach in concept. However, the evidence provided by Staff shows that this true-up had only a *de minimis* contribution to any possible over-collection of lost revenue. Staff witness Rogers' surrebuttal

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[12] NRDC witness Mosenthal, T. III, 689–90.
[13] Ex. 300, Gupta Rebuttal, p. 4, l. 23–p. 7; T. II, 576–8.

testimony suggests that Ameren over-collected net lost revenue in the current MEEIA plan by $4.6 million for 2013 and by an estimated $24.9 million for 2014.[14]

However, only a tiny fraction of that amount, if any, is based on the very minor inaccuracies between the deemed savings Ameren relied on and the final *ex-post* EM&V true up which the Staff/OPC Stipulation would correct. In fact, in 2013 *ex-post* EM&V estimated that Ameren actually saved 3% **more** than it deemed[15] and in 2014 Ameren deemed values only overestimated actual savings by 4.7%.[16] Combining the two years of program delivery, this resulted in only a 1% reduction in *ex-post* EM&V savings compared to what Ameren deemed. This *de minimis* level is far less than any reasonable uncertainty that already exists in all EM&V assessments.

As Mr. Rogers' surrebuttal testimony makes clear, the vast majority of his claimed overcompensation results from inappropriately using a new, lower set of avoided costs to recalculate the net benefits.[17]

Staff use of new lower avoided costs is a violation of the MEEIA Plan Cycle 1 Unanimous stipulation that locks in the avoided costs used when setting the original throughput disincentive mechanism.[18] Further, even without that stipulation Staff's approach is inappropriate because the mechanism's fixed percent of net benefits was established to return a set amount of money to Ameren, and was simply expressed as a percent of the deemed net benefits based on avoided costs existing at the time. If the throughput disincentive had been

[14] Ex. 710, Rogers surrebuttal pp. 16–18
[15] Ex. 710, p. 17, Table 2.
[16] Ex. 710, p. 18, Table 1.
[17] Ex. 710, pp. 17–8, Tables 1 & 2.
[18] Ex. 710, p. 13, lines 9–12 and 14–21; Case No. EO-2012-0142, Unanimous Stipulation of July 5, 2012, ¶ 5.b.1, pp. 3–4; ¶ 6.b, pp. 8–11. The RLJ took administrative notice of this stipulation, T. III, 905–6.

designed with full knowledge of the future lower avoided costs it would simply have required a higher percentage to be recovered by Ameren.

In actuality, the subsequent lower avoided costs most likely resulted in an increase in the net lost revenue Ameren experienced. This is because a large portion of avoided costs reflect the variable costs saved on Ameren's system from efficiency, and also lowered the value of any off-system sales of this excess capacity, as Staff witness Kliethermes makes clear in her supplemental direct testimony.[19] This would have increased Ameren's net lost revenue and makes it likely Ameren may not have even recovered its full net lost revenue.

As made clear above, the slight theoretical improvement in using *ex-post* EM&V results is very minor, and in fact has an expected value to ratepayers of zero. This is especially true for the MEEIA Plan 2 cycle because the deemed values in Ameren's TRM have already undergone an adjustment update process informed by the latest *ex-post* EM&V results.[20]

C. The Staff/OPC TD-NSB violates GAAP.

The Staff/OPC Stipulation throughput disincentive mechanism fundamentally risks denying ratepayers **any future efficiency programs** and all of their associated economic and environmental benefits. It allows Ameren to contemporaneously bill two-thirds of "unrealized revenue value" with the final "realized kWh values" being subject to EM&V (Staff/OPC Stipulation, pp. 7–8).

This mechanism clearly ignores and exacerbates one of Ameren's primary and explicit financial and accounting concerns that it has indicated is **critical to the Company agreeing to any future program implementation**. Specifically, this relates to accounting rules that preclude

[19] Ex. 702, S. Kliethermes, Clean, Corrected Supp. Direct, p. 6, ll. 5–11 and ll. 18–23.
[20] Voytas, T. I, pp. 253–4, 256.

Ameren from timely booking of revenue if the revenue is not certain and is subject to future true-ups.[21] As Ameren has made clear, this accounting requirement results in regulatory lag that directly effects its credit rating and financial standing in ways that hurt shareholders, and thus ultimately, all ratepayers. Under Generally Accepted Accounting Principles (GAAP) and SEC requirements, the company cannot recognize revenue until it is objectively determinable and probable of recovery.[22] This condition not being met by the Staff/OPC Stipulation, the company will not proceed with programs if the non-utility mechanism is imposed.[23]

Ameren witness Lynn Barnes is "100% sure" that ASC-980-605-25 will not allow revenue recognition. She added that it was a "certainty" that Ameren would not implement the Staff/OPC stipulation[24] and that it would "almost certainly" result in Ameren offering no programs in 2016.[25] Staff has not justified taking such a gamble.

D. The Staff/OPC Performance Incentive is fatally flawed.

NRDC supports the Ameren/NRDC Stipulation performance incentive mechanism as it provides reasonable earnings opportunities while creating incentives for Ameren to maximize capture of all cost-effective efficiency. For example, it provides some risk cushion to Ameren by allowing some modest earnings to begin at 70% of initial goals. However, the earning opportunities are most lucrative to Ameren when it exceeds 100% of its goals—which are already almost a third higher than those proposed by Staff and OPC—through exemplary performance, as shown in the graphs in Appendix A of the Stipulation. At the same time, it continues to reward Ameren for additional savings with no limit, so long as additional savings

[21] Barnes, T. II, 487–8.
[22] Barnes, T. II, 492–3.
[23] Barnes, T. II, 501.
[24] Ex. 103, Barnes Rebuttal to Non-Utility Stipulation, p. 11.
[25] Id. at p. 15.

capture additional net benefits for the ratepayers.[26] It does this while protecting ratepayers by ensuring that once Ameren exceeds 130% of goals, Ameren will not capture greater earnings beyond the 16.86% of new incremental net benefits, with the remainder (after any through disincentive recovery) accruing directly to ratepayers.

Finally, the Ameren/NRDC Stipulation performance incentive is far preferable to that proposed in the Staff/OPC Stipulation. The Staff/OPC Stipulation incentive is primarily tied to peak demand savings, and contains no provision to reward Ameren for energy savings except for a possible "energy-related PI" that the Commission may order (Staff/OPC stipulation p. 4, ¶ 2.d.iv; p. 9, ¶ 7.c). This creates a number of perverse incentives that will likely harm ratepayers.

Staff witness Kliethermes states that this approach was chosen because Staff believes capacity savings (and thus opportunities to retire the Meramec power plant) are the primary economic benefit to ratepayers and building alternative capacity represents the primary forgone earnings opportunity to Ameren.[27] However, capacity represents only one portion of the net economic benefits from efficiency programs. In fact, the Ameren/NRDC Stipulation performance incentive mechanism more properly accounts for the relative value of capacity benefits because it bases earnings on the full net benefits. As a result, it provides a much better aligned incentive mechanism that encourages maximizing all net benefits to ratepayers, either from capacity or energy, while giving capacity savings its appropriate weighting in terms of overall economic value.

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[26] Mosenthal, T. III, 689–90.
[27] Ex. Kliethermes Supp. Direct, p. 9, ll. 5–10.

There is ample testimony that peak demand savings are merely incidental to efficiency measures.[28] They "just happen;"[29] they can be estimated[30] but they can't be measured[31] and are not achieved by all efficiency measures.[32] Demand savings therefore provide no basis for a MEEIA plan.

Staff and OPC justify the demand-based incentive on the ground that it satisfies the statutory requirement that the programs "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." Section 393.1075.4, RSMo.[33] However, Staff witness Rogers admitted on the stand that deferring or avoiding new supply-side additions was a benefit to all customers,[34] as were public health benefits.[35]

The Surrebuttal of NRDC witness Mosenthal supports this conclusion.[36] Mr. Mosenthal points out that 100% participation is impossible,[37] and Rogers admitted there were benefits to non-participating customers, including the very option to participate in programs.[38] The Total Resource Cost (TRC) cost-effectiveness test, incorporated in MEEIA as a preferred test (sec. 393.1075.4), looks at the "total net costs of energy services to all ratepayers collectively."[39] These considerations point to the conclusion that MEEIA assumes all customers collectively benefit, even those who do not directly participate in programs.

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[28] Voytas, T. I, p. 261 ll. 3–10; DE witness Hyman, T. II, p. 568.
[29] Voytas, T. I, p. 286 ll. 6-8
[30] Laurent, T. II, pp. 537 l. 16–538 l. 24.
[31] Voytas, T. I, p. 287, ll. 2–12
[32] Voytas, T. I, p. 286 ll. 9–15.
[33] Marke, T. II, pp. 665–6
[34] T. III, 782.
[35] T. III, 740–41.
[36] Ex. 303, p. 5, ll. 18–27.
[37] Ex. 303, p. 6, ll. 6–8.
[38] T. III, p. 780, l. 10–p. 781, l. 4.
[39] Ex. 303, p. 6, ll.15–6.

Conclusion

As is made clear above, Commission approval of the Ameren/NRDC Stipulation is in the best interests of Ameren customers and would: provide the greatest cost-effective energy savings; maximize the net benefits and bill savings accruing to all customers; allow for and encourage progress toward capture of all achievable cost-effective efficiency; ensure fair and proportionate recovery to Ameren of programs costs, the throughput disincentive, and a reasonable performance-based earnings opportunity; and be acceptable to and supported by the Company.

In contrast, approval of the Staff/OPC Stipulation could result in a host of negative consequences to Ameren customers, including, but not limited to: guaranteeing 2016 savings and net benefits would be dramatically less than Ameren has already agreed to pursue; creating strong disincentives for Ameren to agree to increase 2017 and 2018 savings goals, which are currently also dramatically lower than goals for those years Ameren has already agreed to; create a throughput disincentive that does not address the Company's primary and explicit financial and accounting concern related to timely booking of revenue and avoiding regulatory lag; discourage the Company from focusing on long term and highly cost-effective energy savings and shifting focus to peak demand savings which the Company already has inherent incentives to pursue and which are less valuable to ratepayers and less beneficial to the environment; and ultimately risking that the Company would not accept the stipulation and elect to discontinue efficiency programs thereby depriving ratepayers of any benefits and ensuring future over-investment in risky and expensive supply-side alternatives.

In addition, the Ameren/NRDC Stipulation with its higher goals and potential for even greater savings in 2017, 2018, and beyond will result in greater long term customer economic benefits and is better aligned to help the State of Missouri and Ameren comply with the final version of the U.S. EPA's Clean Power Plan, and take advantage of the Clean Energy Incentive Program component, which provides enhanced credits for efficiency programs in low-income communities, so long as those savings still exist in 2020 and 2021.[40] Because efficiency is the cheapest resource and method of compliance with the Clean Power Plan, and captures long-lived savings, this will provide substantial additional ratepayer benefit.

For all of the above reasons, NRDC encourages the Commission to adopt the Ameren/NRDC Stipulation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and sent by email on this 13th day of August, 2015, to all counsel of record.

/s/Henry B. Robertson
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[40] EPA Factsheet, Clean Energy Incentive Program, http://www.epa.gov/airquality/cpp/fs-cpp-ceip.pdf