

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Consideration and )  
Implementation of Section 393.1075, RSMo, ) File No. EX-2010-0368  
The Missouri Energy Efficiency Investment. )  
Act. )

**APPLICATION FOR REHEARING**

COMES NOW the Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or the Company) pursuant to § 386.500 RSMo, 4 CSR 240-2.080 and 4 CSR 240-2.160, and for its Application for Rehearing of its Order of Rulemaking in the captioned case, states the following:

1. On February 9, 2011, the Missouri Public Service Commission (Commission) issued Orders of Rulemaking in the above-captioned case, which adopted four regulations (4 CSR 240-20.093; 4 CSR 240-20.094; 4 CSR 240-20.163 and 4 CSR 240-20.164), designed to implement Section 393.1075 RSMo. This section is referred to as the Missouri Energy Efficiency Investment Act or MEEIA. The Commission should rehear this matter and thereafter amend its Order of Rulemaking for the reasons set forth herein.

2. Ameren Missouri has greatly increased its investment in energy efficiency programs over the past several years. However, there are significant impediments to the Company's ability to continue this investment trend. MEEIA was implemented to overcome these impediments and to encourage utilities to invest in energy efficiency programs.

3. MEEIA became law on August 28, 2010 and set state policy regarding energy efficiency:

It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:

- (1) Provide timely cost recovery for utilities;
- (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
- (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.<sup>1</sup>

4. MEEIA does not dictate to the Commission how it must accomplish these three requirements; however, MEEIA does provide explicit direction that the Commission must meet three requirements (timely cost recovery, aligning financial incentives with helping customers use energy more efficiently and timely earnings opportunities). All three must be addressed and upheld by the Commission.

5. The rules, as adopted by the Commission, fall short of supporting the three directives as established by the Missouri legislature. Ameren Missouri asks the Commission to grant rehearing and to revise two areas of the rules which related directly to the three requirements cited above. First, the Company asks that the definition of Lost Revenues found in 4 CSR 240-20.3(1)(Q) be modified.<sup>2</sup> Second, the Company asks the Commission to remove the requirement, which appears in numerous locations throughout the rules, that costs, lost revenues and/or incentives only be recovered on a retrospective basis. Each of these requests is discussed below.

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<sup>1</sup> 393.1075.3 RSMo.

<sup>2</sup> The Commission's Order of Rulemaking discusses changes to 4 CSR 240-3.164(1)(M), 4 CSR 240-20.093(1)(Y) and 4 CSR 240-20.094(1)(U). Modifications may need to be made to those sections as well.

6. It is clear the rules, as adopted, will not meet the requirements of MEEIA. The initial trials of the rules should be used to implement new approaches that adequately support the aggressive pursuit of energy efficiency. The current rules invent an approval process which is perhaps even more limiting than the status quo by eliminating options rather than preserving them.

### **Definition of Lost Revenues**

7. The Commission adopted definition of Lost Revenues is the single most significant factor which will inhibit the aggressive pursuit of energy efficiency by utilities in the state of Missouri. Mr. Kidwell testified to this concern during the December 20, 2010 hearing.<sup>3</sup> NRDC was even more direct in its comments on this issue.

This throughput incentive amounts to a strong disincentive for utilities to invest in energy efficiency or to support energy savings policies and measures outside their control, and the magnitude of the disincentive is substantial...The statutory direction to the Commission to align utility and financial incentives such that utilities are encouraged to support energy efficiency investments that save customers money is rendered meaningless if this powerful disincentive is not addressed in [a] meaningful and timely manner in this rulemaking.<sup>4</sup>

8. Specifically, the Commission created this concern when it defined Lost Revenues in a manner that only allows recovery when the utility's net system retail KWh sales drop below the level used to set rates. This issue alone is problematic enough to prevent the intent of MEEIA from being implemented in the state of Missouri.

9. The Order of Rulemaking recognizes Lost Revenues as a cost.<sup>5</sup> This is an appropriate recognition for the Commission to have made in this rulemaking. However, the adopted rules only allow for limited recovery of those costs. Ameren Missouri asks

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<sup>3</sup> December 20, 2010 Hearing, Tr. p. 94.

<sup>4</sup> December 20, 2010 Hearing Tr. p. 71.

<sup>5</sup> EX-2010-0368, Order of Rulemaking, p. 4.

the Commission to think of these costs as opportunity costs. For example, presume a utility's rates were set assuming it would sell 800 KWh. Also presume the utility would sell 1000 KWh without its energy efficiency programs and that it would sell 900 KWh with its energy efficiency programs. The utility's pursuit of energy efficiency programs will clearly recover its revenues, in an amount equivalent to 100 KWh, yet the utility would not to recover those lost revenues under the Commission's definition. This definition misses the fact that this is a throughput disincentive. Just because billing units are not lower than those used in setting rates in a utility's last rate case does not remove that disincentive. In short, it is unreasonable to expect any business to pay its customers to reduce its revenues.

10. MEEIA requires the Commission to align utility financial incentives with helping customers use energy more efficiently. Yet the current version of the rule will continue the financial bias against energy efficiency programs because they will continue to result in the reduction of utility revenues. Unless the Commission recognizes the importance of this concern and modifies its definition of Lost Revenues in a way that will allow the utility to overcome the financial throughput disincentive associated with selling less of its product, its rules cannot fulfill the mandates of MEEIA.

11. Ameren Missouri believes the Commission should adopt the definition found in its Integrated Resource Planning (IRP) rules.

Lost margin or lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed demand-side measures, multiplied by the fixed-cost margin of the appropriate rate component.<sup>6</sup>

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<sup>6</sup> 4 CSR 240-22.020(38).

The definition is simple and effectively eliminates the largest disincentive associated with implementing energy efficiency programs.

### **Timely Cost Recovery**

12. As cited above, MEEIA requires the Commission to “provide timely cost recovery.” The rules, in several locations, state that costs or incentives cannot be recovered except on a retrospective basis.<sup>7</sup> This means the Company must file its DSIM plan with the Commission, have it reviewed by Staff, the Office of Public Counsel and all parties, have it approved by the Commission, expend the money to implement the program and then wait for evaluation results before it can recover these amounts.

13. This approach does not represent an improvement in the previous way costs were recovered in Missouri. As Mr. Curtis Blanc of Kansas City Power & Light Company testified,

The second is timeliness of recovery...the statute itself says the goal is to further encourage investment in DSM, and in order to further encourage, you have to do what is better than the status quo now. The companies currently have traditional test year rate case...but that doesn't further the ball. I don't think that's what the statute intended to do. And I guess more than that from a policy perspective, if the goal is to encourage further investment, based on a historical test year, that could be two years, three or four years ago, the utility has no incentive to spend more money on energy efficiency than it did in a test year three or four years ago. If you want to remove that disincentive, you have to move the ball from traditional cost-of-service ratemaking.<sup>8</sup>

14. The delay inherent in retrospective recovery means that the Commission's rules cannot meet the MEEIA requirement of “timely cost recovery.” As Mr. Steve Kidwell, Vice President of Corporate Development, pointed out, having to wait until after the expenditures are made and the energy savings has been verified creates a disincentive

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<sup>7</sup> 4 CSR 240-20.093(2)(G)5 mandates retrospective recovery for Lost Revenues and 4 CSR 240-20.093(2)(H)2 mandates the same for Incentives.

<sup>8</sup> December 20, 2010 hearing, Tr. p. 83.

for utilities to pursue energy efficiency.<sup>9</sup> The better solution is to include in rates the estimated energy impact that is found in the utility's integrated resource plan and then true it up, as needed, once the evaluation is complete. This allows for timely cost recovery while still protecting utility customers.<sup>10</sup> Additionally, this type of treatment would send a "...strong signal to senior management of utilities..." that the Commission is setting a policy that encourages the pursuit of all cost-effective energy efficiency.<sup>11</sup>

15. Through the rules defined process, the Company will go through a detailed process where its proposed programs will be thoroughly reviewed and commented upon by multiple parties, including the Commission Staff and the Office of Public Counsel. The Commission will then issue an order specifically approving the programs and the underlying assumptions. There is no reason for the rules to then reverse course and presume the utility will not succeed in achieving future energy savings, which would be the only reason to justify requiring lost revenues and incentives be rewarded retrospectively. Instead, the rules should allow for timely cost recovery, and allow the utility to recover the accompanying lost revenues and/or incentive. The rule provisions governing reporting, variances, and rate changes outside rate cases all work together to provide appropriate accountability for the utility and protections for utility customers.

16. Finally, as was noted in the *AmerenUE Response to Order Directing Briefing*, MEEIA does not contemplate retrospective cost recovery. MEEIA requires the programs to **result** in energy or demand savings, but it does not require that the programs **have resulted** in energy or demand savings.<sup>12</sup> MEEIA does not require a historical look

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<sup>9</sup> December 20, 2010 Hearing, Tr. p. 115.

<sup>10</sup> December 20, 2010 Hearing, Tr. p. 95.

<sup>11</sup> Id.

<sup>12</sup> Section 393.1075.4 RSMo.

back prior to allowing for recovery. In fact, MEEIA explicitly requires the Commission to allow for timely cost recovery and timely earnings opportunities. The rules, as currently drafted, fail to fulfill these basic requirements of MEEIA.

WHEREFORE, Ameren Missouri respectfully requests that the Missouri Public Service Commission grant rehearing with respect to its February 9, 2011, Order of Rulemaking issued in the above-captioned case, as requested herein, and upon rehearing and reconsideration of the issues raise herein, issue a new Order of Rulemaking consistent with this filing.

Respectfully submitted,

/s/ Wendy K. Tatro  
Wendy K. Tatro, Bar # 60261  
Thomas M. Byrne, Bar #33340  
Union Electric Company  
d/b/a Ameren Missouri  
P.O. Box 66149 (MC 1310)  
1901 Chouteau Avenue  
St. Louis, MO 63166-6149  
(T) 314-554-3484  
314-554-2514  
(F) 314-554-4014  
[AmerenMOService@ameren.com](mailto:AmerenMOService@ameren.com)

Attorneys for Union Electric Company  
d/b/a Ameren Missouri

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission, facsimile or email to all counsel of record on this 10th day of March, 2010, to the following:

Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Office of Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102

/s/ Wendy K. Tatro

Wendy K. Tatro