

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a )	
AmerenUE's Tariffs to Increase its Annual )	Case No. ER-2012-0166
Revenues for Electric Service )	

**RESPONSE OF NRDC, SIERRA CLUB,  
AND RENEW MISSOURI TO AMEREN MISSOURI'S "MOTION TO STRIKE PORTIONS OF INITIAL  
POST-HEARING BRIEF"**

COME NOW Natural Resources Defense Council (NRDC) and its affiliated parties, and in response to Ameren Missouri's *Motion to Strike Portions of Initial Post-Hearing Brief* ("Brief"), submit the following:

1. NRDC and its affiliated parties do not contest the motion with respect to the material quoted in paragraphs 1 and 2 of the motion. We were simply mistaken about whether this material had been included in previously filed testimony and should have been more careful.
2. NRDC and its affiliated parties do not attempt to introduce new evidence at page 6 of the Brief in stating:

First, the Commission approved lost-revenue mechanism does allow Ameren to recover lost revenues from some non-utility energy efficiency efforts. Specifically, it does so by allowing the company to assume a net-to-gross value of 1.0, which means that it will assume that 100% of the savings from participant-installed measures is fully attributable to Ameren's programs (Unanimous Stipulation, p. 4 footnote 7; p. 9, fn. 8).

3. Ameren concedes that the stipulation is in evidence (Motion, paragraph 4) but states, "no witness provided written or oral testimony that purported to go beyond the four corners of that stipulation," and that NRDC's brief "attempts to explain the substance of . . . portions of the MEEIA stipulation" and therefore "constitute extra-record evidence." (Motion at 2-3)

4. NRDC's reference to the contents of the MEEIA stipulation does not go beyond the four corners of the document. Instead, the passage simply summarizes what the MEEIA stipulation states.

5. The stipulation describes this mechanism broadly at first:

The cumulative net megawatt-hours ("MWh") determined through EM&V to have been saved as a result of the MEEIA Programs will be used to determine the amount of Ameren Missouri's Performance Incentive Award, with the cumulative net MWh performance achievement level (expressed as a percentage) being equal to cumulative net MWh savings determined through EM&V divided by Ameren Missouri's total targeted 793,100 MWh (which is the cumulative annual net MWh savings in the third year of the three-year Plan period). The targeted net energy savings shall be adjusted annually for full program year impacts on targeted net energy savings caused by actual opt-out.<sup>7</sup>

<sup>7</sup> This is based on a net-to-gross ratio equal to 1.0 (except for the Refrigerator Recycling Program, which has a net-to-gross ratio of 0.64). Note that all references to net-to-gross ratios in this Stipulation to the Refrigerator Recycling Program assume the net-to-gross ratio for that program is 0.64.

(Unanimous Stipulation, p. 4; fn. 6 omitted)

6. While Ameren is correct that the stipulation does not contain the phrase "lost-revenue mechanism," the fact that the stipulation refers to its lost-revenue mechanism as a "net shared benefits" mechanism is well known to the Commission and is covered by the testimony of witness Morgan in this case. This mechanism is characterized by the MEEIA stipulation as the "Ameren Missouri TD-NSB Share" and explained in more detail:

The Signatories agree there is a need to true-up (separately for the residential and non-residential customer classes) the 90% of the estimated Ameren Missouri TD-NSB Share that is billed to the amount of the Ameren Missouri TD-NSB Share. . . . For purposes of determining the Ameren Missouri's TD-NSB Share, the only changes that will be made to the inputs<sup>8</sup> . . . to calculate actual NSB are (i) the actual number of energy efficiency measures (by type) installed in each month up to that point, (ii) the actual program costs in each month incurred up to that point; and (iii) for Commercial and Industrial Custom

measures for which the TRM does not provide a deemed value, savings determined according to the protocol provided for at pages 85 to 98 of the TRM.

<sup>8</sup> E.g., Net-to-gross ratio equal 1.0 (except for the Refrigerator Recycling Program, which has a net-to-gross ratio of 0.64), avoided costs, and discount rate.

(Unanimous Stipulation, p. 8-9)

7. This mechanism is described by Witness Pamela Morgan as the “net shared benefits mechanism,” and her rebuttal testimony states:

The parties in File No. EO-2012-0142 have reached a settlement, which the Commission has approved, through which *a net shared benefits mechanism* (referred to in the settlement as “Ameren Missouri’s TD-NSB Share”) *will hold Ameren Missouri harmless from losing fixed cost-related revenues as a result of its energy efficiency programs*. Accordingly, the rate design change that Ameren Missouri proposes in the current rate case is not necessary to remove barriers to Ameren Missouri’s pursuit of energy efficiency.

(Exhibit 650, Morgan, at 13 (emphasis added)).

8. Witness Morgan’s testimony states that the “net shared benefits mechanism (referred to in the settlement as ‘Ameren Missouri’s TD-NSB Share’) will hold Ameren Missouri harmless from losing fixed cost-related revenues as a result of its energy efficiency programs.” (Exhibit 650, Morgan at 13). One of the components of the mechanism is allowing the company to assume a net-to-gross value of 1.0, which by definition, means the parties to the stipulation assume that 100% of the savings from all measures is fully attributable to Ameren’s programs. NRDC’s Brief simply summarized the MEEIA stipulation, which contained a lengthy explanation of what the Brief succinctly characterized as the “lost-revenue mechanism.”

9. Ameren objects (Motion, paragraph 6) to the use of the term “free ridership” at page 6 of the Brief, which states:

Savings estimates by independent evaluators studying similar programs in many other states, including Ameren Illinois programs, are significantly discounted to account for free-ridership, or the extent to which some program participants would have installed the measure even without the contribution from Ameren's programs. By not accounting for free-ridership, the lost-revenue mechanism allows for recovery of revenues that might have been lost as a result of efficiency from third-party policies or programs.

10. The question of whether the lost-revenue or "net shared benefits" mechanism does or does not fully protect Ameren from revenue erosion is part of the record, found in both Witness Morgan's and Witness Davis's testimony.

11. As previously mentioned, Witness Morgan stated:

The parties in File No. EO-2012-0142 have reached a settlement, which the Commission has approved, through which a net shared benefits mechanism (referred to in the settlement as "Ameren Missouri's TD-NSB Share") will hold Ameren Missouri harmless from losing fixed cost-related revenues as a result of its energy efficiency programs. *Accordingly, the rate design change that Ameren Missouri proposes in the current rate case is not necessary to remove barriers to Ameren Missouri's pursuit of energy efficiency.*

(Exhibit 650, Morgan, at 13, emphasis added.)

12. Witness William R. Davis, in his surrebuttal testimony stated:

Ms. Morgan is only partially correct because under the net shared benefits model approved in Case No. EO-2012-0142 *Ameren Missouri is only protected from the negative consequences of its own energy efficiency programs.* Consequently, there is still a "throughput problem" (i.e. a disincentive) for the Company to support third-party programs and/or any efforts to ratify building codes that increase building efficiency or appliance standards that increase appliance efficiency. The Company's proposal to increase the monthly residential service charge will, although in a small way, move toward alignment with those third-party sources of energy efficiency, and will do so with negligible effects on customer payback periods.

(Exhibit 40, Davis Surrebuttal, at 9-10, emphasis added).

13. Ameren states in its Motion, "the information presented in this excerpt appears nowhere in the written or oral testimony of any witness in this case. In fact, no witness used

the phrase ‘free ridership,’ or discussed or described that concept, in any written or oral testimony presented in this case.” (Motion at 3, paragraph 6.)

14. However, the concept of free ridership is fundamentally at the core of the meaning of a net-to-gross ratio, which is itself explicitly described in the two places in the stipulation. (Unanimous Stipulation, p. 4, 8-9) A net-to-gross value of 1.0, by definition, means the parties to the stipulation assume that 100% of the savings from all measures is fully attributable to Ameren’s programs, which means there is an assumption that free ridership is negligible or offset by program spillover. It stands to reason that a different assumption would result in discounting estimated savings results to account for savings that would have occurred even without Ameren’s programs (free-riders). Given that both witnesses opined on whether Ameren was protected from revenue erosion from savings not attributable to its programs, and given that the stipulation in evidence explicitly describes the net-to-gross assumptions to be used in determining savings for the purpose of the lost-revenue mechanism, both the concept of free-ridership and the term should be permissible in this brief. Ameren’s motion attempts to nitpick at the terms to use when defining and describing the concept of net-to-gross. “Net-to-gross ratios” and “free ridership” are terms of art often heard before this Commission and familiar to all the parties to the stipulation.

WHEREFORE NRDC et al. ask the Commission to deny Ameren’s motion to strike except as to the material quoted in paragraph 1 of the motion which we concede should not have been included.

Respectfully submitted,

/s/ Henry B. Robertson

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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 November, 2012, to all counsel of record.

/s/ Henry B. Robertson

