BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren	)	
Missouri's Filing to Implement Regulatory Changes in	)	File No. EO-2012-0142
Furtherance of Energy Efficiency as allowed by MEEIA.	)	

AMEREN MISSOURI'S RESPONSE TO MOTION FOR VARIANCE DETERMINATIONS AND MOTION FOR EXPEDITED TREATMENT AND RESPONSE TO JOINT MOTION TO ESTABLISH PROCEDURAL SCHEDULE

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company) and, in response to Staff's *Motion for Variance Determinations and Motion for Expedited Treatment* (*Staff Motion*) and in response to the *Joint Motion to Establish Procedural Schedule* referenced below, submits the following:

1. Ameren Missouri filed its *Application* in this case on January 20, 2012.

2. On February 17, 2012, Staff filed its *Staff Motion*, which requested the Commission order the following:

- State which variances need to be addressed for Ameren Missouri's proposed demand-side programs investment mechanism (DSIM), including some that were not requested by the Company in its *Application*;
- Find whether Ameren Missouri has shown good cause for the requested variances;
- Determine whether the 120-day timeframe in 4 CSR 240-20.094(3) begins before or after the Commission rules on variances; and
- Order the Company to make an additional filing to provide good cause for variance requests.

In addition, on the same date, Staff, the Office of the Public Counsel, Sierra Club, Earth Island Institute d/b/a Renew Missouri, the Natural Resources Defense Council, and the Missouri Department of Natural Resources filed a *Joint Motion to Establish Procedural Schedule*. The Company will respond to both motions in this *Response*.

I. VARIANCE ISSUES

A. <u>120-day Time Frame</u>

3. The *Staff Motion* takes the position that either the 120-day time frame found in the Commission's MEEIA rules does not begin until the Commission rules upon the Company's variance requests or that the Commission should toll the 120 days until after it has ruled upon the variance requests. Neither the Commission's rules nor common sense supports adoption of either of the Staff's positions.

4. First, the plain terms of the Commission's MEEIA rules directly refute the Staff's argument that the 120 days found in the Commission's rules do not begin to run until after the variances are ruled upon. *See* 4 CSR 240-20.094(3). ("[t]he commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days ***of the filing of an application*** under this section…" [emphasis added]). The rule could not be more clear: the Commission must act within 120 days of the filing of an application. In addition, the rules expressly provide for variance requests (which can be granted for good cause) and do not contain any requirement, nor do they suggest in any way, that the requests for variances should or must be filed or ruled upon outside of the 120-day time period provided for in the rules. Staff's argument is that the 120 days do not begin until after requested variances are addressed is inconsistent with the language of the applicable rules, and should be rejected by the Commission.

5. The Staff has also failed to adequately support its fallback position; its suggestion that the Commission should toll the 120-day time frame. The Company has supported its variance requests with detailed analysis contained in the Company's MEEIA filing, and it would be nonsensical to address the variances without considering the substance

of the MEEIA filing at the same time. The Staff's suggestion would require the Commission to evaluate the substance of the report twice, once during the variance phase in order to consider the requested variances and then again during the MEEIA consideration phase, when it hears arguments on the proposal itself. Common sense dictates that the *Staff Motion* be rejected in favor of the direct approach of taking the variance requests under advisement along with the rest of the case, with the Commission to then rule upon whether it will approve Ameren Missouri's proposal with the variances, or will only approve it without some or all of the variances. That this is what is contemplated is borne out by another provision of the regulations which makes clear that if the utility's plan is not approved as proposed, the utility retains the right not to implement an alternative proposal. *See* 4 CSR 240-20.094(2)(B). Put another way, the Company's proposal is one with the variances. It is that plan as proposed by Ameren Missouri that is at issue in this case. The Commission is not bound to approve that particular plan or to approve the variances, but the Commission is required to evaluate that plan that has been proposed; that is, one that includes the variances.[1]

B. <u>Good Cause</u>

6. The *Staff Motion* claims that the Company has not demonstrated good cause for the requested variances. While the courts as well as this Commission have applied a variety of formulations of "good cause" – including some of the principles the Staff cites and other principles the Staff does *not* cite – the Missouri Supreme Court has declared that, at its core, "good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer to which the decision is committed." *Wilson v. M.E. Morris*, 369 S.W.2d 402, 407 (Mo. 1963). Similarly, the Missouri Supreme Court has held that good cause is "…a cause or reason sufficient in law; one that is based on equity or justice or that

[1] The Commission must, however, ensure that its decision complies with the mandates contained in MEEIA.

would motivate a reasonable man under all the circumstances." *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971). The Missouri Court of Appeals has used the same standard. *Matter of Seiser*, 604 S.W.2d 644, 646 (Mo.App. 1980). The Missouri Court of Appeals has also referred to good cause as "…one of reasonableness as applied to the average man or woman." *Central Missouri Paving Co*, 575 S.W.2d 889, 892 (Mo.App. 1978).

7. The circumstances of this case are that the Company's filing as a whole explains in great detail why it is requesting the proposal at issue, and why the proposal is designed as it is designed. The filing as a whole justifies (i.e., provides good cause for) the variances. If the Commission finds that design to be appropriate then it will find, in the exercise of its discretion under the circumstances of this case, that the variances are appropriate. Put another way, whether the variances are justified and whether the proposal at issue (as described in the overall MEEIA filing) should be approved are questions that are inextricably bound together and cannot logically or practically be separated. To adopt the Staff's proposal would be to create a procedural delay which is neither necessary nor appropriate.

8. The *Staff Motion* proposes a skewed view of what the Commission must determine in this case. It is clear that the *Staff Motion* sets forth the most restrictive definition of good cause possible (avoidance of manifest injustice) which the Staff argues must be justified in only one manner -- quantitatively. Aside from the fact that the Company has provided quantitative justification for the majority of the requested variances (e.g., the Company has quantified the impact of implementing energy efficiency upon its cash flows, earnings levels and various credit metrics), the Staff's view reflects poor policy and misstates the law. As the cases cited above demonstrate, the concept of good cause resists any one definition, let alone the Staff's overly narrow view of what that definition should be. Good cause does not have to be

based on quantitative analysis alone and the Company does not bear the burden to prove that a requested variance is quantitatively superior to a proposal that does not require a variance, as is suggested on page four of the *Staff Motion*. The cases reflect the fact that the Commission has ample discretion to find good cause for reasons of regulatory policy, to balance customer and utility interests, or in order to achieve state policy. Indeed, the Staff's narrow application of good cause degrades the authority of the Commission by reducing its consideration of good cause to one driven solely by raw numbers and completely divorced from the policy considerations inherent in most if not all Commission cases, including a MEEIA case. But such an approach would be particularly problematic in a MEEIA case, in which the Commission must apply the mandates the General Assembly has prescribed for it (e.g., to ensure that utility financial incentives are aligned with helping customers use energy more efficiently), as well as the policies reflected in the goals contained in MEEIA.

C. Separation of the Consideration of Variances from the Substance of the MEEIA Filing

9. The *Staff Motion* also argues that it is necessary for the Commission to rule upon the variance requests prior to considering Ameren Missouri's proposal. Staff argues that the multitude of permutations that they would have to consider is an insurmountable barrier to a thorough review. The fact is that there is no overwhelming list of possible alternatives. For instance, either the Commission grants the variance regarding retrospective recovery or it does not. Ameren Missouri has already provided the analysis for both options. Either the Commission grants the use of a Technical Resource Manual (TRM) or it does not. If it does not, Ameren Missouri (not the Staff) will be the one faced with deciding if the alternative imposes too much risk because it is Ameren Missouri that has the right and responsibility to decide if it will implement an alternative DSIM. 4 CSR 240-20.094(2)(B). Either the Commission grants

the variance needed to adopt the Company's net shared benefits proposal or it does not. Either way, the revenue requirement needed to offset the throughput disincentive is the same. While the Staff may attempt to paint a picture of the Company's filing as boxing in the Commission, the simple fact is that Ameren Missouri proposed a plan that accomplishes the mandates of MEEIA and any party can oppose the plan or can propose modifications to it. The Staff's focus on a myriad of proposals the Company has not made, as opposed to evaluating the proposal that has been made, serves only to accomplish delaying the benefits of energy efficiency for Ameren Missouri's customers.

II. REQUESTED VARIANCES

A. Retrospective Recovery

10. The Staff makes several arguments as to why the Commission should not grant the requested variances related to retrospective recovery of shared net benefits. The Staff's first argument, beginning on page six of the *Staff Motion*, is that this variance request is supported by similar considerations to those expressed in comments Ameren Missouri supported in the Commission rulemaking docket and considerations which the Staff contends were rejected by the Commission in its Final Order of Rulemaking. Staff's position is tantamount to saying that a utility cannot ask for a variance at all, particularly if the variance is requested based upon considerations that are similar to those raised during the rulemaking. Such a limitation does not appear within the Commission's MEEIA regulations. Nor should the Commission restrain its discretion to grant variances when it believes there is good cause to do so. The rule sets forth the Commission's judgment regarding how, in a base case, the statute is to be implemented. But as the rule itself acknowledges, the Commission has retained the right to grant variances from the rules if the Commission determines that good cause exists to do so. In this case, the evidentiary

record will contain specific information about the negative impacts the rule imposes upon the Company and how that makes it impossible to effectuate the *statutory* requirement of MEEIA to align the financial interests of the utility with helping customers use energy more efficiently. This information (impact upon cash flows, impact upon earnings, impact upon various credit metrics) was not available during the rulemaking and was not considered at the time when the Commission adopted the rules. Additionally, the Company has filed the Supplemental Testimony of William Davis, which provides further demonstration of the fact that retrospective recovery fails to align the financial interests of the utility with helping its customers use energy more efficiently[2].

11. Staff next argues, on page nine, that Evaluation, Measurement and Verification (EM&V) best balances risk between Ameren Missouri and its customers because it "ensures that Ameren Missouri is not just going through the motions of particular demand-side programs, but ensures that both Ameren Missouri and its customers benefit from them." Staff's suggestion that the Company has or would "just go through the motions" is offensive and unsupported. The Company has a three year history of implementing high quality energy efficiency programs. Chapter 3.3 of the report (starting on page 51) contains a description of the type of risk and uncertainty that reliance upon EM&V can impose upon Ameren Missouri and its customers. For example, the Company cannot influence the baseline end use or the average hours customers use light bulbs. Also, the Company has no influence on the methodological limitations inherent with measuring those things. The limitations associated with measuring energy usage that never happened ensure there will be disagreements from all parties – including the Company and

[2] Mr. Davis's testimony provides quantifications of the impact of retrospective recovery (quantifications the Staff requested) on the alignment (or lack thereof) of those interests. The Company was not required to conduct this analysis but did so in an attempt to move past the disagreement between the Company and the Staff on this issue.

stakeholders. Evaluation results can unintentionally over or under-value the performance of energy efficiency programs. If programs are over-valued, then customers will face more costs associated with a higher-recorded performance level. The TRM removes this uncertainty. By agreeing to measure attributes and net-to-gross factors up-front, there is protection from after-the-fact over or under-valuing of the effects of the programs caused solely by the limitations that are inherent in the evaluations themselves. In other words, the adoption of a TRM sets those parameters up-front. There can be discussion of what parameters are appropriate (i.e., the parameters that should be reflected in the TRM), but the determination is best made before program implementation and not after through EM&V. The best balance is the adoption of a TRM up-front with retrospective EM&V to true-up the number of measures installed. As noted, this removes the evaluation risks noted above while retaining the Company's incentive to effectively run its programs. This is because if the Company does not obtain installation of the number of measures anticipated, it will have to refund the dollars associated with that difference to its customers. If Ameren Missouri obtains more installations than anticipated, customers will pay that difference to the Company. Use of the TRM does not in any way remove or reduce the motivation to effectively administer programs. What is removed is the evaluation uncertainty, which the Company cannot otherwise control. Because uncertainty cannot be controlled it cannot, in any event, act as an effective motivator.

12. The Staff then argues that retrospective recovery results in energy efficiency investment being treated like a supply-side investment. There are several flaws in this argument. First, the MEEIA statute does not require that the Commission treat demand-side investment exactly like supply-side investment. Instead, it requires the Commission to "value demand-side investments equal to traditional investments in supply and delivery infrastructure." (393.1075.3

RSMo.). "Value" in the statute means that when the utility is contemplating an investment in either a supply-side or demand-side resource, the utility is indifferent to the choice economically (i.e., the utility "values" them the same). Further, the underlying premise of the Staff's argument is itself flawed. When a supply-side option becomes used and useful, the costs can be recovered through a return on and a return of the investment in that resource, and without a loss of revenues because of it. In contrast, an energy efficiency measure produces benefits for customers as soon as it is installed; that is, it is immediately used and useful, but the Company also suffers the negative impacts of the throughput disincentive immediately. MEEIA requires the Commission to align utility financial interests with helping customers use energy more efficiently. The retrospective recovery of the throughput disincentive does not accomplish the statutory mandate – it does not achieve this alignment -- and Staff's argument, although made repeatedly, fails to reflect the reality of how energy efficiency impacts utilities.

13. This variance request, in particular, is one that requires the Commission to consider the entirety of the evidence set forth in the MEEIA report filed on January 20th. Chapters one and two of the report directly support this requested variance. The interests of the Company, as well as customers and other stakeholders, are much better served if the Commission hears the entirety of this case and then makes a decision on the requested variances based upon the full record, rather than relying upon a separate and uninformed process as proposed by the Staff.

B. <u>Technical Resource Manual</u>

14. Staff opposes the use of a TRM for a couple of reasons. Staff repeats the argument addressed above about treating a demand-side investment exactly the same as a

supply-side investment. The Company will not repeat its explanation of why this argument is illogical and should be rejected.

15. Staff also argues that calculating savings based upon values deemed in a TRM is wrong because they should be verified through EM&V. This argument reflects a fundamental misunderstanding of how Ameren Missouri developed the TRM. Over the past three years, Ameren Missouri has invested over $3 million in independent EM&V of its energy efficiency programs and measures. Customers have (and are still) paying for that work; surely it should be used in a manner that maximizes its value. These EM&V results were used to develop the values found within the TRM. In fact, 91% of the planned measure installations and 71% of the planned energy savings are based upon Ameren Missouri-specific EM&V studies.

16. Interestingly, the Commission's own rules call for the development of a statewide TRM. The rule requires a statewide collaborative to "address the creation of a technical resource manual that includes values for deemed savings." (4 CSR 240-20.094(8)(B)). Once the state-wide TRM is developed, "Electric utility's EM&V contractors shall use, if available, a commission-approved statewide technical resource manual when performing EM&V work." (4 CSR 240-093(7)(E)). Clearly, the rules already contemplate the use of deemed savings from a TRM. A statewide TRM has not yet been developed and so the Company has developed a TRM specific to its service territory, which logically should make such a TRM even more appropriate for use than would be a statewide TRM. The Staff's arguments in opposition to the TRM and deemed savings, if valid, would be just as applicable to a statewide TRM with deemed savings as they are to Ameren Missouri's TRM and deemed savings. While the Staff's arguments may point to some rule clarification which is needed, they do not justify opposition to the Company's requested variances.

C. Energy Efficiency Line Item on Bill

17. The Staff has not yet taken a position on this requested variance but says they will further explore the merits of the request. Ameren Missouri believes the explanation contained in its *Application* provides sufficient justification for the Commission to grant this variance. The Company will address this request further, if necessary, after Staff completes their further exploration.

D. Annual Shared Net Benefits

18. The *Staff Motion* does not support this request for a variance because there "is an insufficient basis upon which to grant his [sic] variance." As the Staff states, the rules require the sharing of net benefits on an annual basis rather than on a lifetime basis. This is true. In any given year, the amount necessary to offset the throughput disincentive may be less than or greater than the net benefits experienced in that year. But, if one views the net benefits over the lifetime of the program, it is apparent that the portion customers retain is far greater than the portion the Company requests. The lifetime view is the more appropriate and practical approach.

19. The *Staff Motion* also alleges that the use of lifetime net benefits instead of annual net benefits moves recovery of costs to an earlier point in time. This viewpoint is incorrect and is based upon a misunderstanding of the Company's proposal. The Company is using shared net benefits as the means to solve the throughput disincentive. The calculation of the sharing percentage is only relevant from a practical standpoint. The throughput disincentive has been quantified at $105 million pre-tax. The application of shared net benefits is a mechanical calculation and is merely an avenue for recovery of this cost. The revenue requirement necessary for this cost is the same whether it is calculated on an annual basis or a lifetime basis.

The important issue is whether the application of shared net benefits provides the immediate rate relief which offsets immediate financial losses.

20. The *Staff Motion* misrepresents the explanation contained in the Company's *Application*. The *Staff's Motion* quotes a single line from the Company's explanation, but ignores the portion of the *Application* which points out that the Utility Cost Test is calculated using lifetime savings and lifetime costs. This is also true of every other way that energy efficiency is viewed. The TRC is calculated using lifetime costs and lifetime savings. In general, cost effectiveness is determined by evaluating lifetime costs and lifetime benefits. The Company is merely proposing to use the same methodology for calculating the sharing percentage of net savings, which means the Company has an incentive to maximize the cost effectiveness of its programs.

21. Ameren Missouri has proposed a methodology that aligns the utility's financial interests with helping its customers use energy more efficiently, as MEEIA requires. Again, this variance request is based upon the analysis found within the Company's MEEIA report. The Commission should evaluate the report and all of the evidence in this case before determining whether there is good cause for granting this variance.

III. VARIANCES NOT REQUESTED

22. The *Staff Motion* identifies seven variances, covering four topics, which Ameren Missouri did not request, but which Staff believes should have been requested. These include filing exemplar tariffs sheets, providing annual and cumulative demand savings targets, and requesting a shift in the start date for the savings goals. The Company does not believe it was required to request a variance for any of these topics. Instead, the Company believes Staff is proposing that the Commission adopt a hyper-technical interpretation of its rules. An

interpretation that, if adopted, risks depriving the Company of its ability to implement all cost-effective energy efficiency programs. For the reasons described below, the Commission should reject the Staff's efforts to delay full consideration of the Company's filing.

A. <u>4 CSR 240-20.094(3)(D)</u>

23. 4 CSR 240-20.094(3)(D) requires utilities to file and receive approval of tariff sheets prior to implementation of "approved demand-side programs." Obviously, the Company is not required to file any demand-side program tariff until after the Commission has issued an order approving Ameren Missouri's requests in this case because the Company cannot *implement* the programs prior to approval. Given the obvious fact that the Commission has yet to rule upon the Company's proposed MEEIA filing, it is equally obvious that the Commission hasn't approved the programs. To be clear, however, the Company prefers to have any concern over its proposed tariffs to be addressed in this proceeding and for that reason the Company included in its *Application* a set of program tariffs (residential and business) which are exactly the tariffs that the Company intends to file after Commission approval has been granted. If Staff or other parties have concern with the tariffs, this case provides a forum for them to express (and the Commission to evaluate) those concerns. The Company welcomes substantive discussion on this issue, but it is not a procedural issue for which the Company requires a variance.

24. The Staff's only explanation of their concern is that the Company "did not file exemplar tariff sheets for individual business or residential demand-side programs" and that the Company is requesting broad discretion for managing the implementation of its energy efficiency programs. Reading between the lines, it appears the Staff's real concern is not that exemplar tariff sheets were not provided but is instead rooted in a desire that the Company provide *more detailed* tariff sheets, which would provide additional details about each program,

presumably similar to the Company's existing tariffs. As noted, while the Staff is free to take up with the Commission the issue of how much detail should be in any particular tariff as part of its analysis of the Company's proposal, the question of whether or not the Company is in compliance with this rule or needs a variance from it is not at issue.

B. <u>4 CSR 240-20.094(4), 4 CSR 240-20.094(4)(A) and 4 CSR 240-3.164(4)</u>

25. These rules deal with *modifications* to approved demand-side programs. 4 CSR 240-20.094(4)(1) requires the utility to file for and receive approval of tariff sheets prior to implementing of approved modifications. 4 CSR 240-20.094(4) requires utilities to file for approval of modifications when there is a variance of 20% in the approved demand-side plan three year budget and/or a program design modification which is not covered by the approved tariff sheets. Ameren Missouri has not yet received approval for its initial MEEIA tariff sheets (and so could not modify approved MEEIA tariff sheets at this time), but has every intention of filing for changes if either of the above-cited criteria occurs.

26. 4 CSR 240-3.164(4) requires that when a utility files to modify its approved demand-side programs, it shall file a complete explanation for and documentation of the proposed modifications. The Company is only required to file for modification when there is a variance of 20% in the approved three year budget and/or a program design modification which is not covered by the approved tariff sheets, as discussed above. Obviously, the Company has not filed for modification of programs, since they have not yet been approved in the first place. However, if this situation arises, the Company will comply with this requirement.

C. <u>4 CSR 240-3.164(2)(C)9 and 4 CSR 240-20.094(3)(A)</u>

27. 4 CSR 240-3.164(2)(C)9 requires the Company to provide certain information, including "proposed annual demand savings targets and cumulative demand savings targets." 4

CSR 240-20,094(3)(A) says the Commission is to approve demand-side programs and the annual demand (and energy) savings targets for those programs.

28. While the Company does not believe a waiver is necessary for these portions of the rule, the Company acknowledges that the annual and cumulative demand savings targets were inadvertently omitted from the Company's January 20th filing. Attached to this filing as Exhibit A is a Schedule containing those targets, accompanied by the affidavit of Ameren Missouri witness Richard Voytas. Filing this information at this point in the case will not prejudice the other parties in this case, as the same information was already available to them in the work papers provided to Staff, OPC and DNR on the day of the filing. Work papers were also provided to the other parties upon the Commission granting their intervention applications.

D. <u>4 CSR 240-20.094(2)</u>

29. 4 CSR 240-20.094(2) sets forth the Commission's guidelines to review progress toward the goal of achieving all cost-effective energy efficiency. It sets forth savings goals, which begin in 2012. As the Company indicated in its initial filing, on page 41, the Company anticipates beginning its MEEIA energy efficiency programs in 2013 rather than in 2012. The Company does not believe it is necessary to request a waiver in order to make this adjustment as the listed savings targets are explicitly called "goals." In the Commission's Order of Rulemaking, the Commission confirmed that these "goals" are not mandatory (see page 12 of Commission's Order of Rulemaking on 4 CSR 240-20.094(2) in the MEEIA rulemaking, Case No. EX-2010-0368). Given that fact, it was not necessary to request a variance from any requirement because there is no requirement to meet the "goal" in the first place.

30. However, the Company recognizes the purpose of the goals is to provide a guideline for the Commission to measure the utility's progress towards achieving the goal of all

cost-effective energy efficiency. In this case, Ameren Missouri is proposing the Realistic Achievable Potential (RAP) level of energy efficiency, based upon the Company's market potential study. This portfolio, with the accompanying DSIM, represents progress towards the goal of all cost-effective energy efficiency, so it is not necessary to use the MEEIA rule goals to measure Ameren Missouri's progress towards achieving all cost effective energy efficiency. However, if the Commission believes a variance of this rule is warranted, then the Company hereby requests a variance so that the first year of savings starts with 2013 instead of 2012. This request will not prejudice review of the Company's filing, as the justification for sliding the years back one year is contained in the Company's original MEEIA filing. (See page 41 of the Ameren Missouri MEEIA Report).

31. Additionally, the Commission should recognize that it would not have been possible for Ameren Missouri to have MEEIA programs filed, approved and implemented by January of 2012. The Company made its MEEIA filing as soon as was practicable. Staff witness John Rogers agrees, as evidenced by the following testimony, on what a reasonable filing date would be for Ameren Missouri:

> Q. Do you agree with Mr. Davis [that making a MEEIA filing in June of 2011 is overly optimistic?]
> A. Upon reflection, I do agree. I now feel that the Company should take more time to prepare its MEEIA filings, and I believe a more reasonable date for the Company making its MEEIA filings is January 1, 2012. (Case No. ER-2011-0028, Surrebuttal Testimony of John A. Rogers, p. 16, l. 4-7).

Commission rules require a Commission order no later than 120 dates from the filing date of the Application. Setting aside the possibility that the 120 days could be extended, this means the Commission would issue an order by May 19, 2012. The Company will then need the rest of 2012 to undertake the steps necessary to implement the MEEIA energy efficiency programs by

January 1, 2013. It simply would not be possible to start the proposed MEEIA programs any earlier than that date. Accordingly, even if a variance were required, there exists good cause to grant it, which would move the goals back a year so that the first year's goal is applicable to 2013 rather than 2012.

IV. THE STAFF'S PROPOSED PROCEDURAL SCHEDULE

32. The Company's *Application* proposed a procedural schedule which would have resulted in a Commission order within the 120 days prescribed by the Commission's rules. As the Company explained in its filing made last week, a delay in the 120 day time frame is fraught with problems. Several of the other parties filed a *Joint Motion to Establish Procedural Schedule,* to which the Company objects. Neither of the alternatives proposed provide any certainty of when an order will be issued in this case. Given the operational constraints surrounding the Company's current programs and the projected implementation date for its MEEIA programs, an open-ended procedural schedule is not feasible and would place implementation of beneficial energy efficiency programs at substantial risk.

33. The time already lost (due largely to the procedural "wrangling" that has persisted since the filing was made), however, has likely rendered the Company's proposed schedule unworkable as testimony from the other parties would be due a mere five days after the Commission adopts a procedural schedule for this case (assuming, as the Company has urged, that such a schedule be adopted no later than the Commission's February 29th Agenda). That, coupled with the recognition that a quarter of the 120 days has already been lost, leads the Company to be willing to commit to the Commission that it will make an extension of up to 60-days work, although such a delay is not without consequences. The consequence of such a delay is that it will necessitate a delay in the start date of Ameren Missouri's 2013 programs by the

same amount of time, as the Company will still need time to prepare (post-this docket) for the implementation of its full scale programs. It may lead to a significant gap in time where no energy efficiency programs are available to customers. Accordingly, if the Commission believes a 30-day extension will suffice, that is the extension which should be granted because it will only delay program implementation by 30 days. If the Commission adopts a 60-day extension, it should make it clear that no further extension shall be granted. Additionally, the ability to implement these programs also depends upon the Company's ability to implement the DSIM when it implements new rates in its current electric rate case, Case No. ER-2012-0166. Consequently, it is important that the Commission's procedural order make clear that the costs associated with approved programs will be eligible for inclusion in a DSIM implemented in that rate case even if an extension of the 120 days prescribed by the Commission's MEEIA rules delays final resolution of this docket beyond the true-up date adopted in the rate case.

34. Paragraph 8 of the *Joint Motion to Establish Procedural Schedule* also addresses several other procedural issues. The Company does not object to any of the items listed except for a portion of item (d). This portion of item (d) would require the Company to respond to data requests within ten calendar days and object within five calendar days. The Company has already offered to shorten the time to respond to data requests (14 calendar days), and is willing to shorten that time even further to the requested ten calendar days. However, the Company requests that the time for objections or requests for additional time be set at five *business* days rather than calendar days. Otherwise, for example, there would in practice only be three days to evaluate a data request served late on a Friday.

35. Staff, in its pleading filed today, warns the Commission to be "wary of taking any action in this case that would undermine its position in that [MEEIA rulemaking] appeal."

Staff's concerns are unfounded; the court is statutorily prohibited from taking new or additional evidence in the appeal. (386.510 RSMo.). It is limited to the record in the Commission's rulemaking case.

V. CONCLUSION

36. The state is approaching the three year anniversary of the passage of MEEIA, but as of yet, it has not seen an increase in energy efficiency programs. To the contrary, the size of energy efficiency in Missouri is shrinking. The Company's filing explains why this is so and why approval of the Company's filing will indeed bring a very substantial increase (practically doubling) in energy efficiency programs, as the goals in MEEIA contemplate. Adopting the Staff's positions – acting as though the 120-day time period has not started, advocating that it be tolled, engaging in hyper-technical arguments about peripheral issues, and focusing on arguments about variances that are not needed – would impede those goals. It is time to consider (and litigate as needed) the central issues in this case, such as does Ameren Missouri's MEEIA proposal provide over $800 million of customer benefits; does the customer benefits exceed the costs (by more than a factor or two); does it provide for timely cost recovery; does it align the Company's financial interests with helping the Company's customers use energy more efficiently; and does it provide timely earnings opportunities associated with cost-effective energy efficiency savings? The Company stands ready, willing and able to move forward with addressing those questions and sincerely hopes that the parties can move beyond the tortured legal interpretations that underlie the procedural skirmishes reflected in the *Staff Motion* and work towards implementing all cost-effective energy efficiency in Ameren Missouri's service territory.

WHEREFORE, Ameren Missouri respectfully requests that the Missouri Public Service Commission deny the *Staff's Motion* and adopt a procedural schedule that does not extend the Company's proposed procedural schedule by more than 60 days, and that it do so no later than February 29, 2012.

Respectfully submitted,

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Table 1 Demand Savings by Program (MW, excluding losses)

Program	**2013**	**2014**	**2015**	**Total**
RES-Lighting	3.6	2.9	1.9	8.4
RES-Efficient Products	1.3	2.6	3.8	7.7
RES-HVAC	12.4	24.3	36.7	73.4
RES-Refrigerator Recycling	1.6	1.7	1.9	5.2
RES-Home Energy Performance	0.4	0.4	0.4	1.1
RES-New Homes	0.1	0.3	0.6	1.0
RES-Low Income	0.8	0.8	0.7	2.4
RES-Total	**20.1**	**32.9**	**46.1**	**99.1**
BUS-Standard	4.5	5.7	8.6	18.9
BUS-Custom	13.0	13.7	20.3	46.9
BUS-New Construction	0.8	1.1	1.9	3.8
BUS-Retro-Commissioning	0.5	0.5	0.6	1.7
BUS-Total	**18.9**	**21.0**	**31.4**	**71.3**
Portfolio Total	**39.0**	**53.9**	**77.5**	**170.4**

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record this 24th day of February, 2012.

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