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 As Allowed by MEEIA	)))))	Case No. EO-2015-0055

REPLY TO
"AMEREN MISSOURI'S RESPONSE IN OPPOSITION TO THE OFFICE OF THE PUBLIC COUNSEL'S MOTION FOR DETERMINATION ON THE PLEADINGS OF AMEREN'S APPLICATION FOR APPROVAL OF FLEX PAY PROGRAM PILOT AND REQUEST FOR ASSOCIATED VARIANCES"

COMES NOW the Office of the Public Counsel ("OPC") and replies to Staff's Response as follows, responding using the same numerical paragraphs as Ameren:

1. OPC's Motion is a "Motion for Determination on the Pleadings." See Mot. Det. Plgs Heading, ¶ 1. It is not a Summary Determination motion. Thus, it is filed pursuant to 4 CSR 240 -2.117(2), not 4 CSR 240-2.117(1). Subsection (2) does not contain any requirements regarding stating facts with particularity or filing a separate memorandum.

2. The arguments stated by OPC regarding the prior rulemaking proceedings do not state facts because OPC's argument is a legal argument. This is because a determination on the pleadings is a legal argument, not a factual argument. The reference to the prior rulemaking proceeding was not to establish any facts. Rather, it was to aid the Commission in correctly interpreting the rule.

3. Again, a motion for determination on the pleadings does not require the Commission to determine whether there is a fact dispute. When evaluating whether to

dispose of a matter based upon the pleadings, the fact finder (Commission) is to assume the facts alleged in the pleadings are true. "The pleadings are liberally construed and all alleged facts are accepted as true and construed in a light most favorable to the pleader." *Koger v. Hartford Life Insurance*, 28 S.W.3d 405, 411 (Mo. App. W.D. 2000). For the purposes of OPC's Motion, this Commission is to review Ameren's Application and determine whether, even if everything they allege is true, is the pilot program even eligible under MEEIA?

4. Again, OPC is not asking for "Summary disposition."

5. The same argument made in paragraph 3 applies here. It does not matter whether there is a conflict. This Commission need only look at Ameren's pleadings to determine whether the pleadings themselves would establish a MEEIA eligible program. They do not. This is because "deprivation of service" described pre-pay. The addition of those words to the promulgated rule was as a direct result of Geoff Marke's describing pre-pay to the Commission. See Marke Rebuttal, pages 7-11. The rulemaking history leaves very little to interpret.

6. In response to Paragraph 6, Ameren is correct that "4 CSR 240-2.117(2) does not specify…standards for deciding motions for determination on the pleadings."[1] In fact, there are not standards because the subsection can be applied broadly. Such a motion can be granted "whenever such disposition is not otherwise contrary to law or contrary to public interest." And, the rule also explicitly states when a determination on the pleadings cannot be granted: "a case seeking a rate increase or which is subject to an operation of law date." Neither of those exceptions apply here, so logically subsection

[1] Except, "pleadings" is not the correct word for a Motion.

(2) is in play in this case. The list of instances provided by Ameren that "should be reserved for cases" are reading requirements into the rule that do not exist.

7. Similar to previous paragraphs, the rulemaking history laid out in Geoff Marke's rebuttal testimony explains why "deprivation of service" describes this pilot program exactly.

8. Holding an evidentiary hearing would be inefficient and would waste this Commission's time and resources. If this Commission holds a hearing, the following issues (and potentially others) would also be heard, in addition to whether this pilot program is MEEIA eligible:

- How should the Commission define a low-income customer for purposes of the Company's proposed pilot?
- Should the Company be required to receive Institutional Review Board ("IRB") approval to ensure it meets the minimum goal of protecting human subjects from physical or psychological harm?
- Should the Company's pilot program be required to be cost-effective?
- Should the company be required to calculate non-energy costs, including direct costs to participants and indirect costs to society at large, as an input for future cost-effective ratios?
- Should costs be limited to the remaining budget allocated for MEEIA Cycle II research and development?

WHEREFORE, OPC respectfully requests that this Commission deny Ameren the pilot program requested and dismiss Ameren's Application accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of April, 2017.

/s/ Curtis Schube