

**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 MOTION TO STRIKE PORTIONS
OF THE DIRECT TESTIMONY OF GEOFF MARKE**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “the Company”) and moves the Commission for an order striking portions of the Direct Testimony of Geoff Marke, which was filed October 22, 2014, on behalf of the Office of the Public Counsel (“OPC”). More specifically, the Commission should:

- strike the portion of Mr. Marke’s testimony that begins on page 5, line 1, and continues through page 16, line 11 (which is identified in the table of contents as “II. The Rebound Effect”), because that testimony represents an attempt by the OPC to introduce a change request well after the deadline provided by the *Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing* (“2012 Stipulation”), to which OPC was a signatory party; and
- strike the portion of Mr. Marke’s October 6, 2014, testimony in support of *Public Counsel’s Response to Change Requests for Adjustment to Ameren Missouri’s Report of 2013 Annual Energy Savings and Net Benefits from MEEIA Programs* entitled *Statement Regarding the Calculation of Net Shared Benefits*, which is attached to and incorporated in Mr. Marke’s direct testimony, that begins on page 62, line 10, and continues through page 64, line 1, because that testimony is not relevant to any issue currently before the Commission.

In addition, the Commission should strike the portion of Mr. Marke's direct testimony that begins on page 2, line 12, and continues through page 4, line 22, as well as his October 6th testimony in its entirety, and order the OPC to refile those portions of the direct testimony in a format that specifically identifies in the text of the testimony each change to the October 6th testimony that Mr. Marke proposes as part of his direct testimony.

1. Ameren Missouri joins Staff in its *Motion to Exclude the Portion of Public Counsel Witness Geoff Marke's Direct Testimony Regarding Rebound Effects*, and urges the Commission to strike the portion of Mr. Marke's testimony that discusses or pertains to the so-called "rebound effect."¹ As Staff notes, the signatories to the 2012 Stipulation agreed that "[a]ny stakeholder group participant who wants a change to the impact evaluation portion of the Final EM&V Report will have 21 days from the issuance of the Final EM&V Report to file a request with the Commission to make such a change . . ." The Final EM&V Report was filed June 12, 2014. Ameren Missouri and Staff each filed change requests on July 3, 2014 – within the time limits prescribed in the 2012 Stipulation. The OPC did not file any formal change request, and the OPC did not make any party aware of the OPC's interest in and concerns about the "rebound effect" until the date Mr. Marke filed his direct testimony. The date of that filing – October 27, 2014 – was more than four months after the Final EM&V Report, which placed it well beyond the twenty-one day deadline for comments prescribed in the 2012 Stipulation.

2. There is no excuse for the OPC's delay in presenting to the Commission and the other parties its change request related to the "rebound effect." As a signatory to the 2012 Stipulation, the OPC agreed to, was aware of, and was bound by the twenty-one day deadline for filing change requests. The Commission should not allow OPC to cavalierly disregard the terms

¹ Generally, the testimony at issue begins on page 5, line 1, and continues through page 16, line 11. But a portion of the testimony beginning at page 16, line 12, and continuing through page 17, line 2, also pertains to the "rebound effect." Ameren Missouri proposes to strike that testimony as well.

of that stipulation and attempt to “bootstrap” consideration of what amounts to a new change request through Mr. Marke’s direct testimony. Only by striking the portion of that testimony that pertains to the “rebound effect” can the Commission confirm the validity of the stipulation and give effect to its terms.

3. The Commission should also strike the portion of Mr. Marke’s direct testimony that discusses the OPC’s proposal to change the method for calculating “Net Shared Benefits.” As the Commission stated in its October 8, 2014, *Order Establishing Procedural Schedule to Consider the Program Year 2013 Change Requests*, the issue to be decided in the current phase of this case is limited to “whether any change request should be adopted.”² Testimony related to the calculation of “Net Shared Benefits” does not pertain to any change request proposed by any party.

4. The change requests the Commission at issue concern the measurement of energy savings for the first year of Ameren Missouri’s MEEIA programs. MEEIA implementation costs are not at issue. Similarly, there is no issue currently before that Commission that is related to the inclusion of such costs in the “Net Shared Benefits” calculation. The current procedural schedule was established for the sole purpose of adjudicating proposed change requests to the annual EM&V results of established MEEIA programs. The OPC’s concerns regarding the “Net Shared Benefits” calculation is not relevant to any of those issues. As noted above, Ameren Missouri and Staff are the only parties to have filed change requests, and neither of those parties asked the Commission to consider provisions of the 2012 Stipulation that pertain to “Net Shared Benefits.” Those issues are not even related to the Final EM&V Reports or the report of the independent

² *Order Establishing Procedural Schedule to Consider the Program Year 2013 Change Requests*, p. 3 (October 8, 2014).

EM&V auditor. Consequently, the Commission should strike the portion of Mr. Marke's testimony regarding "Net Shared Benefits" because it is irrelevant.

5. Ameren Missouri also has concerns about changes to Mr. Marke's October 6th testimony that he attempts to make part of his direct testimony through a narrative explanation. Specifically, the portion of Mr. Marke's direct testimony that concerns the Company is identified in the table of contents as "I. Introduction and Explanation of Changes to the Response to Change Request." In this section (pp. 2-5), Mr. Marke attempts to narratively explain corrections to his October 6th testimony. The narrative description is confusing because it is not accompanied by a copy of the October 6th testimony that specifically identifies each change in blackline or other readily identifiable format. While the Company acknowledges that the Commission has latitude with respect to the mode and manner of the submission of evidence, in this instance, the corrections and changes identified should be resubmitted by OPC and include blackline changes for clarity.

6. In its current form, the corrections to the October 6th testimony offered by Mr. Marke create unnecessary confusion to the parties who are required to understand and analyze those changes. This same confusion will extend to the Commission if the October 6th testimony is offered into evidence in its current form. To eliminate that confusion and provide clarity for both the parties and the record, the Commission should order the OPC to refile the testimony in a format that clearly identifies the changes to the October 6th testimony that Mr. Marke intends to incorporate into his direct testimony.

WHEREFORE, for the reasons stated above, Ameren Missouri respectfully requests the Commission grant this motion, strike the portions of Direct Testimony of Geoff Marke identified above, and grant such further such relief as the Commission deems just and equitable.

Respectfully submitted,

/s/ L. Russell Mitten

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**ATTORNEYS FOR UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2014, a copy of the foregoing was served via e-mail on all parties of record in File No. EO-2012-0142.

/s/L. Russell Mitten
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