

**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 Furtherance of Energy Efficiency as) **Case No. EO-2012-0142**
Allowed by MEEIA.)

**PUBLIC COUNSEL’S REPLY TO STAFF AND AMEREN MISSOURI’S OPPOSITION
TO PUBLIC COUNSEL’S MOTION TO CORRECT TESTIMONY**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and submits this reply to the responses in opposition filed by the Staff of the Missouri Public Service Commission (“Staff”) and Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) and offers these comments in support of its motion to accept amended corrections:

Background

1. On December 31, 2014, Public Counsel filed corrections to its testimony after identifying what it believed to be an inconsistency between the free ridership estimates of the Commission’s auditor and Ameren Missouri’s evaluator for the LightSavers program.¹ Shortly thereafter, members of the Commission’s Staff met with Public Counsel and helpfully provided information to explain that the aforementioned inconsistency was due, in part, to the fact that the auditor used weighted ratios for the LightSavers program to account for the impact of its social marketing distribution (“SMD”) component. Thus, Public Counsel recalculated its savings estimates and sought to amend its corrections to testimony by filing its *Amended Motion to Accept Corrections to Office of Public Counsel Witness Dr. Geoff Marke’s Direct, Rebuttal, and*

¹ Doc. No. 259.

Surrebuttal Testimony.² Thereafter, on January 16, 2015, Staff and Ameren Missouri each filed responses opposing Public Counsel's corrections.³

Reply to Staff

2. Contrary to Staff's assertion, Public Counsel's corrections do not supplement or change its recommendations to the Commission. Public Counsel seeks only to provide the Commission with an accurate quantification of the impact of its recommendations in this case. Staff pointed out that Public Counsel's mathematical formulas did not properly account for the SMD component of the LightSavers program. To correct its mathematical mistake, Public Counsel corrected its formulas to give the right weight to the SMD component. As should be expected, when the formulas were corrected, the resulting savings estimates changed, requiring corrections to the testimony relating to the quantification of the LightSavers program impact. In making these corrections, Public Counsel does not take a new approach, nor does it make any new recommendations. Far from being supplemental, as Staff suggests, these corrections merely provide an accurate quantification of Public Counsel's recommendations for the Commission's benefit.

3. It is disconcerting that after proactively working with Public Counsel to identify corrections to testimony, Staff now seeks to prohibit Public Counsel from making those corrections and thereby deprive the Commission an accurate and complete record. It is unreasonable for Staff to suggest the need for corrections to clarify the impact of Public Counsel's recommendations and then proceed to object when Public Counsel takes action to correct those calculations. The Commission has a right to know the correct impact of Public Counsel's recommendations, and so, Public Counsel moved to file corrected testimony.

² Doc. Nos. 269 and 270. Public Counsel filed its *Motion to Correct Cover Pleading* on January 14, 2015. Doc. No. 274.

³ Doc. Nos. 275 and 276.

4. Equally troubling is the rationale for opposition articulated by Staff's John Rogers in the memorandum attached to Staff's response.⁴ Within the Memorandum, Staff lists five points that form the basis for its opposition to Public Counsel's corrections. These points are unsupported by the pleadings and testimony in this case and provide no legitimate reason for the Commission to reject the amended corrections to Public Counsel's testimony.

5. Points one (1) and two (2) in the Staff's Memorandum relate to the work papers provided by Public Counsel.⁵ Neither issue Staff raised related to work papers should have any bearing on the corrections to Public Counsel's testimony. In point one, Staff states that the work papers do not allow it to verify the information within the corrected testimony of Public Counsel's expert Dr. Marke. Immediately after, in point two, Staff contradicts itself and states that it was able to "verify most – but not all – of the amended corrected values..." after meeting with Public Counsel's Dr. Marke.⁶ While it is certainly understandable that a party may require further clarification on work papers, the need for work paper clarification should not cause the Commission to reject a party's testimony. If the Staff or any party has any inquiries about work papers, it need only ask for further clarification. In fact, here Staff's own pleading provides an example of the willingness of Public Counsel to provide explanation of its calculations.⁷ On January 12, 2015, Public Counsel met with a member of Staff to discuss its calculations.⁸ The Commission should reject Staff's points one and two when considering whether to accept Public Counsel's corrected testimony.

⁴ Doc. No. 275.

⁵ *Id.*

⁶ *Id.*

⁷ Doc. No. 275.

⁸ All work papers were properly and timely provided to all parties to this case following the filing of Public Counsel's amended motion.

6. Nor should the Commission accept Staff's point (3) as a basis to reject Public Counsel's corrected testimony. In that point, Staff states that all of Public Counsel's corrected testimony is to some extent supplemental testimony because Public Counsel has taken a "new approach" in its calculations.⁹ As explained above, the changes to Public Counsel's mathematical formulas were made to account properly for the SMD component of the LightSavers program. Importantly, these corrections were made to quantify accurately the impact of Public Counsel's longstanding and clear recommendations with respect to the LightSavers program. There is no change in Public Counsel's approach to the issues in this case.

7. As a part of its point three, Staff also misstates Public Counsel's corrections when it asserts that Public Counsel takes a new approach to the LightSavers non-participant spillover ("NPSO") adjustment based on weighted ratios.¹⁰ Staff's assertion is wrong. The plain language of paragraph 7 of Public Counsel's motion, referenced by the Staff to support its opposition, shows that Public Counsel's expert did not adjust the ratio for LightSavers NPSO.¹¹ In that paragraph, Public Counsel explains the rationale for the corrections to its calculations. Notably, Public Counsel states, in part:

After examining the Net-to-Gross ratios used by the evaluator and auditor, Public Counsel's expert was able to **confirm** that the components of participant spillover and market effects were also weighted to include the SMD component by the auditor. **However, the non-participant spillover ratio did not change when accounting for the SMD component;** this may be because of the relatively small adjustment for non-participant spillover. **Having confirmed this,** Public Counsel's expert used the weighted ratios to adjust his numbers for the affected components (emphasis added).¹²

As explained in the foregoing quote, Public Counsel's expert looked at the weighted components to confirm what needed to be weighted in his calculations, and did not change the

⁹ Doc. No. 275.

¹⁰ *Id.*

¹¹ *Id.*

¹² Doc. No. 269, pp. 3-4.

ratio for non-participant spillover. Additionally, at the end of paragraph 7, Public Counsel includes a footnote that explains, “[t]he components Public Counsel made weighted adjustments to include free ridership, participant spillover, and market effects.”¹³ Absent from that list is non-participant spillover. Instead, Public Counsel’s expert applied the same ratio for non-participant spillover in his recalculations that Ameren Missouri’s evaluator had used, consistent with earlier recommendations.¹⁴ Moreover, the mathematical changes to the formulas to include weighted ratios for the other components remain consistent with Public Counsel’s recommendations and were made to quantify correctly the impact of those recommendations.

8. Points four (4) and five (5) of the Staff’s memorandum also contain misstatements of fact and should be rejected by the Commission. In point four, the Staff opposes the corrected testimony because it “...contains a number of estimated values as the result of Dr. Marke’s recently taken position that there should be an adjustment for LightSavers rebound effect, a position which Dr. Marke did not introduce until his first direct testimony[.]”¹⁵ This criticism is perplexing and internally inconsistent. In matters before this Commission, the parties are *required* to raise any issues in direct testimony.¹⁶ The Commission already addressed Staff’s position regarding rebound effects in its *Order Regarding Motions to Strike Testimony*, wherein the Commission denied Staff’s motion to strike Public Counsel’s direct testimony.¹⁷ Since the rebound effect issue was, in fact, raised in Dr. Marke’s initial direct testimony, Staff’s fourth point should be given neither credence nor consideration.¹⁸

¹³ *Id.*

¹⁴ Doc. No. 237, p. 2.

¹⁵ Doc. No. 275.

¹⁶ 4 CSR 240-2.130(7).

¹⁷ Doc. No. 226.

¹⁸ Doc. No. 211.

9. In point five of its memorandum, Staff once again misstates the record. Staff alleges that “Dr. Marke’s amended corrected direct testimony contains a number of new estimated values which are the result of Dr. Marke’s recently taken position that the total resource cost (“TRC”) costs should be used ... when calculating the annual net shared benefits, a position which Dr. Marke did not introduce until his rebuttal testimony.”¹⁹ It is true that Public Counsel corrected the savings estimates related to the annual net shared benefits amount. However, Staff’s allegation that this is a new position is not true. Dr. Marke’s position on the TRC test was stated in Public Counsel’s response to change requests, direct testimony, rebuttal testimony, and surrebuttal testimony.²⁰

10. All of the pre-filed testimony of Public Counsel’s Expert, Dr. Marke, is available on the Commission’s electronic filing system. A correct reading of the testimony of Dr. Marke and the proposed corrections in this case refutes the reasons for Staff’s opposition to the amended corrections. Most importantly, the recalculated savings estimates do not change Public Counsel’s recommendations; rather, they are calculation corrections to clarify and quantify the impact of its longstanding recommendations.

Response to Ameren Missouri

11. Ameren Missouri’s *Response to the Office of the Public Counsel’s Motions Dated December 31, 2014, January 12, 2015, and January 14, 2015* also requests that the Commission deny Public Counsel’s motion for corrections and take any further revisions under advisement.²¹ Ameren Missouri states that it generally has no objection to true corrections to testimony, however, in this case it has not had sufficient opportunity to fully review the changes proposed

¹⁹ Doc. No. 275.

²⁰ See Doc. No. 203 pp. 62-64; Doc. No. 211 pp. 62-64; Doc. No. 229 pp. 2-5, 76; Doc. No. 237 pp. 2, 24-27, 35.

²¹ Doc. No. 276.

by Public Counsel.²² Accordingly, the Company objected to Public Counsel’s pending corrections to testimony and suggests that any revisions can be addressed upon Public Counsel’s motion to admit the testimony at hearing.²³

12. Despite admitting that its “technical experts have not had a chance to fully review the changes” Ameren Missouri goes on to describe Public Counsel’s corrections as “broad supplemental changes.”²⁴ Public Counsel’s corrections to its testimony are not made to supplement its pre-filed testimony as both Ameren Missouri and Staff have suggested. Ameren Missouri’s response in opposition offers neither any reason nor any evidence as to why Public Counsel’s corrections should be considered supplemental. The fact is that the mathematical corrections do not change Public Counsel’s recommendations. Absent Ameren Missouri offering evidence to the contrary, the Commission should deny both its objection and its request to take the issue under advisement.

13. Certainly, Public Counsel agrees with Ameren Missouri that the parties should have the opportunity to conduct cross examination of Public Counsel’s expert at the hearing.²⁵ However, there is no benefit or advantage gained by Public Counsel by accepting the corrections to Public Counsel’s testimony. Public Counsel’s recommendations and the rationale for those recommendations has not changed. Public Counsel has merely corrected the formulas used to quantify the impact of its recommendations, corrections made at the behest of Staff. Rather than delaying these corrections until the hearing when these changes will inevitably be raised, the Commission should accept these corrections in advance. Doing so will enable the parties to use the best information available when conducting cross examination of Public Counsel’s expert,

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

save time at the hearing, and ensure that the Commission is presented with a complete and accurate record.

WHEREFORE, the Office of the Public Counsel replies to the responses in opposition of Staff and Ameren Missouri, offers the foregoing comments, and respectfully requests that the Commission will accept the amended corrections to the direct, rebuttal, and surrebuttal testimony of Dr. Geoff Marke filed on January 12, 2014.

Respectfully,

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CERTIFICATE OF SERVICE

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