

**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 RESPONSE TO AMEREN MISSOURI’S MOTION TO STRIKE**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and respectfully responds to Union Electric Company d/b/a Ameren Missouri’s (“Ameren Missouri” or “Ameren”) motion to strike portions of the direct testimony of Dr. Geoff Marke:

**Background**

1. Pursuant to the 2012 *Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing* (“2012 Stipulation and Agreement”), the parties in this case have attempted to measure the impact of the company’s energy efficiency programs.<sup>1</sup> The process for developing the factual record outlined in that agreement provided for the filing of Evaluation, Measurement, and Verification (“EM&V”) Reports completed by the utility’s evaluators, EM&V Reports completed by the Commission’s auditor, any change requests submitted by the parties, and stakeholder responses to those change requests.<sup>2</sup>

2. On September 19, 2014, Staff and Ameren Missouri filed a non-unanimous stipulation and agreement proposing to settle the PY2013 Change Requests.<sup>3</sup> Public Counsel objected to the non-unanimous stipulation and agreement on September 26, 2014.<sup>4</sup> By Commission Rule, once Public Counsel objected to the non-unanimous stipulation and

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<sup>1</sup> *Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing*, File No. EO-2012-0142, Doc. No. 119.

<sup>2</sup> *Id.* at pp. 15-19.

<sup>3</sup> Doc. No. 188.

<sup>4</sup> Doc. No. 192.

agreement, the document became merely a non-binding joint position of the signatory parties (“black-box proposal”).<sup>5</sup>

3. Thereafter, the parties submitted competing procedural schedules to the Commission.<sup>6</sup> Staff and Ameren Missouri requested a procedural schedule that included dates for the filing of additional direct, rebuttal, and surrebuttal testimony, in Public Counsel’s view in contravention of the 2012 Stipulation and Agreement and in order to impermissibly bolster their otherwise unsupported black-box proposal.<sup>7</sup> Public Counsel’s comments in support of its proposed schedule suggested that the process provided for in the 2012 Stipulation and Agreement outlined all the evidentiary filings necessary for a Commission determination of this matter, and that no further filings were needed or advisable.<sup>8</sup>

4. On October 8, 2014, the Commission issued its *Order Establishing Procedural Schedule to Consider the Program Year 2013 Change Requests* and set out a procedural schedule which incorporates the filing of direct, rebuttal, and surrebuttal testimony.<sup>9</sup> The Commission ordered:

As a result, the parties are free to offer any evidence they believe is relevant to the question of whether any change request should be adopted.<sup>10</sup>

5. To determine whether any change request should be adopted, the Commission must consider: 1) what are the PY2013 EM&V annual energy savings to be credited to Ameren Missouri?, and 2) what are the PY2013 net benefits amounts to be credited? Both Ameren Missouri and Staff have recognized on various occasions that these are the issues before the

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<sup>5</sup> 4 CSR 240-2.115(2)(D).

<sup>6</sup> Doc. Nos. 195 & 196.

<sup>7</sup> Doc. No. 196.

<sup>8</sup> Doc. Nos. 197 & 205.

<sup>9</sup> Doc. No. 206.

<sup>10</sup> Doc. No. 206.

Commission at present.<sup>11</sup> In their black-box proposal, Staff and Ameren Missouri recognize that the PY2013 EM&V annual energy savings and the net benefits amount are the underlying issues to be resolved:

... As a result of numerous discussions to reach a settlement, the Signatories agree to the following terms to settle the PY2013 **Change Requests issues**.

8. For purpose of determining the Ameren Missouri 2013 – 2015 performance incentive award amount in 2016, the **PY2013 EM&V annual energy savings** is 369,500 MWh and the PY2013 **net benefits amount** is \$129,925,000.<sup>12</sup>

Staff and Ameren Missouri further address these issues, in their respective direct testimony.<sup>13</sup>

6. Consistent with the Commission’s direction that parties may offer “any evidence they believe is relevant to the question of whether any change request should be adopted,” Public Counsel filed direct testimony on October 22, 2014.<sup>14</sup> Within that testimony, Dr. Marke explains the “rebound effect” as it relates to overall energy savings.”<sup>15</sup>

### **Ameren Missouri’s Motions**

7. Ameren Missouri requests that the Commission: 1) strike portions of Public Counsel witness Dr. Geoff Marke’s direct testimony regarding rebound effects, 2) strike the portions of Dr. Marke’s *Response to Change Requests* that discuss the calculation of net shared benefits, and 3) strike the portion of Dr. Marke’s direct testimony relating to the corrections of his *Response to Change Requests* filed on October 6, 2014, and further to strike the entirety of the October 6, 2014 filing.<sup>16</sup>

8. It is curiously inconsistent that Ameren should raise as an issue a prohibition on new change requests. In its October 6<sup>th</sup>, 2014, *Response to Change Requests*, Ameren Missouri

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<sup>11</sup> Doc. Nos. 165, 166, 167 & 188.

<sup>12</sup> Doc. No. 188, p. 3.

<sup>13</sup> See Doc. Nos 210, p. 9; Doc. No. 212, p. 55.

<sup>14</sup> Doc. No. 206; Doc. No. 211.

<sup>15</sup> Doc. No. 211, p. 6.

<sup>16</sup> Doc. No. 219.

repeatedly referred to its black-box proposal as a “change request stipulation” even though the date for change requests had long since passed.<sup>17</sup> In that filing, Ameren appeared to explain that its black-box proposal was a change request stating, “...the position espoused in Staff's Change Request has now changed and aligns with *the position provided for in the Change Request Stipulation[.]*” and further, “Ameren Missouri continues to agree with the resolution reached in the *Change Request Stipulation[.]*”<sup>18</sup> Since then, the Company has ceased referring to its black-box proposal as a change request, instead characterizing it as its new position.<sup>19</sup>

### **Rebound effects**

9. In support of its motion to strike the testimony related to rebound effects, Ameren Missouri attempts to characterize Public Counsel’s testimony as a new change request that is out of time and in contravention of the agreed provisions of the 2012 Stipulation and Agreement.<sup>20</sup> However, it was Staff and Ameren Missouri that requested to deviate from the process agreed to in the 2012 Stipulation and Agreement when they sought additional opportunities to submit direct, rebuttal, and surrebuttal testimony in this case.<sup>21</sup>

10. The direct testimony offered by Public Counsel’s expert is consistent with the procedural schedule that the Commission ordered at the request of the Staff and the Company wherein the Commission states that the parties may offer “any evidence they believe is relevant to the question of whether any change request should be adopted.”<sup>22</sup> It is the Staff and the Company that did not want to abide by the 2012 Stipulation and Agreement. Public Counsel’s testimony on rebound effects – which impacts whether the Commission should adopt either Staff

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<sup>17</sup> Doc. No. 202; Doc. No. 119.

<sup>18</sup> Doc. No. 202 (emphasis added).

<sup>19</sup> The Company attempts to portray the black-box proposal as testimony providing evidentiary support for its new position. Doc. No. 212. Public Counsel has filed a motion to exclude the portions of Ameren’s direct testimony that relate to the black-box proposal as being irrelevant. *See* Doc. No. 216.

<sup>20</sup> Doc. No. 219.

<sup>21</sup> Doc. Nos. 196, 199 & 200.

<sup>22</sup> *See* Doc. Nos. 196, 199, 200 & 206.

or Ameren's change requests (or the evaluator or auditor's conclusions for that matter) - fits squarely within the scope of the procedural schedule as ordered by the Commission.<sup>23</sup> As Dr. Marke explains in his direct testimony, a "rebound effect involves increases in energy use that are paradoxically caused by increased energy efficiency. The result is a reduction of expected overall energy savings."<sup>24</sup> This testimony will aid the Commission in determining what level of energy savings the Company achieved in its MEEIA program year, which is one of the central issues that must be addressed by the Commission when resolving a change request.

11. By seeking to exclude this testimony, Ameren Missouri seeks to limit the Commission's ability to reach a just and reasonable result in this case. As the Commission is well aware, the Commission is not bound to accept a change request exactly as filed by a party. Once competent and substantial evidence is presented to establish a record on which the Commission can rule, the Commission may then weigh the merits and proceed to issue any order it chooses in accordance with the law and the weight of the evidence. The Commission should decline to follow the Company's request to limit its review of material evidence. The Commission should review the competent and substantial evidence tending to show what level of energy savings Ameren achieved in its MEEIA program and what is the proper calculation of net shared benefits.<sup>25</sup>

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<sup>23</sup> Doc. No. 206.

<sup>24</sup> Doc. No. 211, p. 6.

<sup>25</sup> Put another way, the Commission must determine whether it believes the evaluator, auditor, Ameren's change request or Staff's change request "got it right." If it believes no one got it right, the Commission must determine what the correct result is based upon the evidence. Public Counsel has offered evidence that none are right, but that Staff's change request, as amended by the corrections Public Counsel offers and substantiates, gets the right result. Staff and Ameren offer a black-box proposal as a resolution to the question of "who got it right" – in a sense, they agree no one did. However, their proposal is just a legal position about how this case should be resolved, is not evidence itself, and offers no basis for the development of evidence. And so, all the parties are left attempting to answer the underlying questions as articulated above: what energy savings are attributable to Ameren's MEEIA program in PY2013?, and what is the proper net shared benefits amount?

12. The Commission should consider the testimony of Dr. Marke on rebound effects when making its decision on the PY2013 EM&V annual energy savings and the PY2013 net benefits for Ameren Missouri. The rebound effects testimony is relevant to the question of whether any change request should be adopted. Accordingly, Ameren Missouri's motion to strike the testimony on rebound effects should be denied.

### **Net Shared Benefits**

13. Ameren Missouri also requests that the Commission strike the portions of Dr. Marke's *Response to Change Requests* that discuss the calculation of net shared benefits.<sup>26</sup> In support of this motion, Ameren Missouri states "...there is no issue currently before that [sic] Commission that is related to the inclusion of such costs in the 'Net Shared Benefits' calculation."<sup>27</sup> The Company continued, "Ameren Missouri and Staff ... 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.'"<sup>28</sup>

14. These assertions are false. To find an example of how pervasive the issue of net shared benefits has been in this case, one need only look at the title of Staff's change request, "*Staff's Change Request For Adjustment To Ameren Missouri's Report of 2013 Annual Energy Savings And Net Benefits From MEEIA Programs* ("Change Request")."<sup>29</sup> The issue is not only in the title of Staff's change request, but is discussed substantially in several other filings. Even the black-box proposal filed by Ameren Missouri and Staff included an explanation of the issues that needed to be resolved to settle the change requests:

... As a result of numerous discussions to reach a settlement, the Signatories agree to the following terms to settle the PY2013 **Change Requests issues**.

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<sup>26</sup> Doc. No. 219.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Doc. No. 165 (emphasis added).

8. For purpose of determining the Ameren Missouri 2013 – 2015 performance incentive award amount in 2016, the **PY2013 EM&V annual energy savings** is 369,500 MWh and the PY2013 **net benefits amount** is \$129,925,000.<sup>30</sup>

Further, both Staff's direct testimony and Ameren Missouri's direct testimony include discussions of the net shared benefits calculation.<sup>31</sup> The Company's own filings show that the testimony related to net shared benefits is an issue to be decided. The motion to strike these portions should be denied.

### **Testimony relating to corrections**

15. Ameren Missouri also moves to strike the portions of Dr. Marke's direct testimony that contains an explanation of corrections to his initial *Response to Change Requests* and further to strike the October 6, 2014, *Response to Change Requests* in its entirety.<sup>32</sup> The Company then asks the Commission to order Public Counsel to re-file the testimony in a different format.<sup>33</sup> In support of this motion, Ameren Missouri states that it seeks clarity as to what portions of the initial filing were corrected. The company further contends that if the non-corrected version is submitted to the Commission it will cause confusion.<sup>34</sup>

16. The portions of Dr. Marke's testimony that identify the corrections state with particularity the line and page numbers that have been corrected and provides the new text.<sup>35</sup> This explanation clearly lets all parties know what sections have been corrected. To the extent that Public Counsel chooses to offer the *Response to Change Requests* as an exhibit, it will offer the corrected version. Any possibility of confusing the Commission is overstated by Ameren

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<sup>30</sup> Doc. No. 188, p. 3.

<sup>31</sup> See Doc. Nos 210, p. 9; Doc. No. 212, p. 55.

<sup>32</sup> Doc. No. 219.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Doc. No. 211, p. 4.

Missouri. These motions to strike the corrections and re-file are unnecessary, serve no valid purpose, and so, should be denied.

WHEREFORE, for the reasons stated above, the Office of the Public Counsel respectfully requests the Commission DENY Ameren Missouri's *Motion to Strike Portions of the Direct Testimony of Geoff Marke* in its entirety.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 5<sup>th</sup> day of November 2014:

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