

**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)
Allowed by MEEIA.)
File No. EO-2012-0142

**STAFF’S SUGGESTIONS IN SUPPORT OF PROPOSED PROCEDURAL SCHEDULE
AND RESPONSE TO PUBLIC COUNSEL’S COMMENTS REGARDING PROPOSED
PROCEDURAL SCHEDULES**

COMES NOW Staff of the Missouri Public Service Commission, by and through undersigned counsel, and in support of the proposed procedural schedule filed jointly by the Staff and Ameren Missouri and in response to Public Counsel’s comments, states as follows:

Background

1. On September 19, 2014, the Staff and Ameren Missouri (“Company”) filed a *Non-Unanimous Stipulation and Agreement Settling the Program Year 2013 Change Requests* (“*Stipulation*”). The *Stipulation* settled the matter of the Change Requests filed on July 3, 2014 by the Staff and Ameren Missouri. The Change Requests relate to the evaluation, measurement and verification (“EM&V”) of the Company’s energy efficiency programs for program year 2013 (“PY2013”). The *Stipulation* also requires Ameren Missouri, Staff and other interested stakeholders to work together to 1) develop by April 1, 2015, a specific process to avoid the need for Change Requests related to EM&V for program years 2014 and 2015, and 2) address revisions to the MEEIA rules and to provide them to the Commission no later than July 1, 2015.

2. On September 26, 2014, Office of Public Counsel (“OPC”) filed its *Objection*¹ to the *Stipulation* and requested an evidentiary hearing. OPC offered no reason or support for its *Objection* leaving both Staff and the Company in the dark about its issues with the *Stipulation*. OPC requested “...the Commission direct the parties to agree upon and file a proposed procedural schedule that includes a date for stakeholder response to any change request and an evidentiary hearing.”²

3. On September 26th, the Commission ordered the parties to file a proposed procedural schedule no later than October 1, 2014³. After numerous discussions the Staff and Company could not agree with Public Counsel on a procedural schedule that would allow the parties to properly place the issues before the Commission in an evidentiary hearing. Because the Commission now has two proposed procedural schedules before it, the Staff offers the following suggestions for the Commission’s consideration.

Suggestions Supporting Procedural Schedule of Staff and Ameren Missouri

4. The Staff and Ameren Missouri entered into what amounts to a “black box” settlement that fairly resolves their competing Change Requests for PY2013 and to provide a process to help avoid any Change Requests for PY2014 and PY2015. In order for the Staff and the Company to demonstrate the reasonableness of its *Stipulation* as it pertains to the EM&V outcomes related to Ameren Missouri’s energy efficiency programs, the parties must be afforded the opportunity to conduct discovery and to develop a proper evidentiary record upon which the Commission can base its

¹ *The Office Of Public Counsel's Objection To The Non-Unanimous Stipulation And Agreement Settling The Program Year 2013 Change Requests And Request For Evidentiary Hearing.*

² *Id.* para. 3.

³ *Order Directing the Parties To File A Proposed Procedural Schedule*

decision as to the *Stipulation's* reasonableness. Due process requires allowing the parties supporting the *Stipulation* to prepare and file direct testimony to lay an evidentiary foundation for their new settled position. Further, at this point it is unknown whether other parties will file testimony in support of the *Stipulation*. Under Public Counsel's proposal no party may file testimony in support of the *Stipulation* and that is unacceptable.

5. More troubling is that Public Counsel has not revealed the reasons for its objection to the *Stipulation*. Under the procedural schedule proposed by Staff and the Company, Public Counsel will have to disclose the reasons for its objection in rebuttal testimony. Parties supporting the *Stipulation* may then rebut Public Counsel's reasons for objection in surrebuttal testimony. Prefiled testimony is essential to the final resolution of this matter because it develops the record evidence in an efficient manner, it informs the Commission, narrows the issues, and affords all parties due process.

6. This *Stipulation* presents issues of first impression to the Commission. Underlying the *Stipulation* is an enormous amount of EM&V data supplied by Ameren Missouri's EM&V evaluators and the Commission's auditor. It is unknown at this point what or how much of that information may be relevant to address Public Counsel's unknown reasons for its objection to the settlement achieved by Staff and the Company. OPC's proposal - not allowing prefiled testimony and fast-tracking this matter to hearing without sufficient time for discovery - could prove a wasteful use of time and resources for the Commission and the parties. Staff anticipates OPC's proposed schedule would easily require more than one week of live testimony at hearing before the Commission. Parties would need to conduct discovery on the stand, to conduct lengthy examination

of any number of witnesses associated with the EM&V process, and to lay the necessary evidentiary foundation for Commission decision. The proposed procedural schedule of Staff and the Company avoids inefficient use of Commission and party resources and provides due process for all parties.

7. Staff can find no reason to fast track this case as OPC has proposed. The Commission's decision in this matter will not have any relevance until May 15, 2015 when the EM&V evaluators will submit their final reports for the next program year, PY2014. And only then does a decision in this matter provide direction to the evaluators and auditor. Ultimately this *Stipulation* affects the Company's Performance Incentive Award that is to be paid to the Company in 2016 after the EM&V results are submitted by the evaluators for program years 2014 and 2015. It is far more important that the parties be permitted the time necessary to conduct discovery and to develop the record supporting this *Stipulation* because it affects the program year 2013 results that will be tallied later in 2016. The schedule proposed by Staff and the Company does not disadvantage the rights of any party.

8. Staff further emphasizes that the terms of the *Stipulation* that will be considered by the Commission provide a way forward for all parties and all stakeholders to resolve their differences through a workshop and a rulemaking described in paragraph 1 above – rather than having only certain interested parties litigating their differences before the Commission at the end of every program year.

9. Staff also points out that OPC's fast track schedule ignores the unavailability of witnesses, the press of pending cases before year end, and scheduled holidays. Staff's witness is not available during Public Counsel's proposed

October 23-24 hearing dates. It is also unclear whether testimony will be required of the EM&V evaluators and auditor, the scheduling availability of which has not been requested or considered.

Response to Public Counsel Comments Regarding Proposed Procedural Schedules

10. In *Public Counsel's Comment Regarding Proposed Procedural Schedules ("OPC Comments")*⁴ OPC argues that its proposed procedural schedule merely reflects the same schedule of events stayed by the Commission to allow settlement discussions. Therefore, under OPC's argument, the Commission should just revive that same schedule of procedural events. What OPC misses is that the stayed procedural schedule was not developed to address the placing of a non-unanimous settlement agreement in front of the Commission. The stayed schedule of events that OPC clings to addresses competing Change Requests between the Staff and the Company. The Company filed direct testimony in support of its Change Request and the Staff filed a verified Memorandum supporting its Change Request. OPC overlooks that Staff and the Company have abandoned their Change Requests, mooted the testimony supporting their original positions, and have reached a settlement that is within the range of reasonable EM&V outcomes. OPC seeks to deny Staff and the Company and any other interested party from providing evidentiary support for the *Stipulation*.

11. Public Counsel acknowledges that at this point the Staff and the Company have reached a "black box" stipulation and agreement. Without giving any reason for its objection to the *Stipulation* which settles the Change Requests dispute between Staff and the Company, Public Counsel curiously seeks to deny Staff and the Company from

⁴ Filed October 2, 2014.

laying a proper evidentiary foundation for their *Stipulation* – an issue of first impression for the Commission.

12. In paragraph 5 of *OPC's Comments*, Public Counsel acknowledges the mountain of technical data and information already filed into the record by the EM&V evaluators and auditor. It is unclear at this point what discovery needs to be conducted by Staff and the Company regarding OPC's unknown reasons for objecting to the *Stipulation* and it is equally unclear whether prefiled testimony or live examination of the EM&V evaluators and auditor will be required at hearing. The procedural schedule proposed by the Staff and Ameren Missouri - and not OPC's proposal – provides for a judicious and efficient use of resources and the Commission's time.

13. In summary, the Staff and Company proposed a procedural schedule that gives the time needed to identify Public Counsel's objection, to develop the record, and to narrow the issues for Commission decision without disadvantaging any party. Due process demands that the parties be allowed sufficient time to conduct discovery and to develop a proper record.

WHEREFORE, Staff prays the Commission accept its suggestions in support of the procedural schedule proposed by the Staff and Ameren Missouri and respectfully requests the Commission reject the fast-track schedule proposed by OPC and approve the procedural schedule as proposed by Staff and Ameren Missouri.

Respectfully submitted,

/s/ Robert S. Berlin

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been electronically mailed this 3rd day of October, 2014 to all counsel of record in this proceeding.

/s/ Robert S. Berlin