

1. On October 29, 2014 the Office of Public Counsel (“OPC”) filed its *Motion to Exclude Portions of the Testimonies of Staff Witness John Rogers and Ameren Missouri Witness Richard Voytas* (“*Motion*”). OPC’s *Motion* quotes the Commission’s *Order* setting dates for the filing of direct, rebuttal, and surrebuttal testimony, in relevant part “..Staff and Ameren Missouri may continue to support that joint position, and the Commission can decide to adopt that position if it is supported by competent and substantial evidence in the record...”³ Mr. Rogers’ direct testimony and workpapers support the joint position as permitted by the *Order* and discussed below.

2. The record evidence in this matter, as filed in EFIS, includes: (1) the direct testimony of Richard Voytas filed in support of Ameren Missouri’s initial Change Request, which the Company later abandoned to support the joint position (2) the verified memorandum of John Rogers in support of Staff’s initial Change Request, which Staff later abandoned to support the joint position, (3) the PY2013 EM&V final reports of the Evaluators, Cadmus and ADM and, (4) the PY2013 EM&V final report of the Auditor, Johnson Consulting. The joint position (also referred to as a “Black Box”) of Staff and Ameren Missouri falls nearly in the middle of the range of appropriate EM&V values⁴ established by the Evaluators’ PY2013 EM&V final reports and the Auditor’s PY2013 EM&V final report as well as the Change Requests of Ameren Missouri and Staff. Listed below are the joint position PY2013 annual energy savings

industrial demand-side programs. As required by 4 CSR 240-20.093(7), the Commission hired Johnson Consulting Group, LLC, (the “Auditor”). The Cadmus and ADM PY2013 EM&V final reports were filed on June 12, 2014 in the Commissions electronic information filing system (“EFIS”). The Auditor’s PY2013 final report was filed in EFIS August 27, 2014.

³ OPC’s *Motion*, page 3, para. 6, quoting from the Commission’s October 8, 2014 *Order Establishing Procedural Schedule to Consider the Program Year 2013 Change Requests*.

⁴ *Direct Testimony of John A. Rogers*, p. 12, lines 25-26. Staff understands that Public Counsel has not disputed the annual energy savings and net benefits amounts.

and net benefits and the range of PY2013 annual energy savings and net benefits derived from Ameren Missouri’s initial proposed adjustments in its Change Request, the Staff’s initial proposed adjustment in its Change Request, and the results of the PY2013 EM&V final reports of the Evaluators and Auditor. See Mr. Rogers’ direct testimony, p. 9, line 5 through p. 11, line 6, for a more thorough explanation of the origin of the range of the PY2013 annual energy savings and net benefits.

PY2013 Annual Energy Savings (MWh)

Ameren Missouri initial Change Request:	397,499
Evaluators:	390,039
<i>Joint Position (“Black Box”):</i>	<i>369,500</i>
Auditor:	322,296
Staff initial Change Request:	310,041

PY2013 Net Benefits

Ameren Missouri initial Change Request :	\$141,187,752
Evaluators:	\$136,425,329
<i>Joint Position (“Black Box”):</i>	<i>\$129,925,000</i>
Auditor:	\$113,272,046
Staff initial Change Request:	\$109,602,961

3. The above results are also shown in Table 3 of Mr. Rogers’ direct testimony. Table 3 contains the results of Staff’s quantification of PY2013 annual energy savings and net benefits for 24 possible scenarios resulting from the 24 different combinations of two different sets of adjustments for free riders (Evaluators and Ameren Missouri), two different adjustments for Lighting program participant spillover (Cadmus

and Auditor), two different sets of adjustments for nonparticipant spillover for each residential demand-side program (Cadmus and Auditor), and three different adjustments for Lighting program market effects (Cadmus, Auditor and Staff)⁵. The different adjustments to the net-to-gross ratio for each of the eleven (11) Ameren Missouri demand-side programs are contained in the Cadmus, ADM and Auditor PY2013 EM&V final reports and in the Change Requests of Ameren Missouri and Staff and are summarized in Table 2 of Mr. Rogers' direct testimony.

4. With regard to net-to-gross ("NTG") adjustments⁶, the only NTG adjustments that were considered by the Evaluators, the Auditor, Staff, and Ameren Missouri are free riders, participant spillover, nonparticipant spillover, and market effects. "Rebound" effects were not a part of the determination of annual energy savings and net benefits in the PY2013 final reports of the Evaluators and the Auditor.

5. The gravamen of OPC's *Motion* is the erroneous belief that Ameren Missouri and the Staff cannot support their new joint position because there is no evidence to support the compromise joint position. Staff disagrees. OPC overlooks the fact that the joint position embodies a compromise settlement of PY2013 annual energy savings and net benefits – a position that is fully supported by the establishment of the low and high range of results set by the EM&V technical experts at determining annual energy savings and net benefits, the Evaluators and Auditor.

⁵ The EM&V Evaluators and Auditor, Ameren Missouri, and the Staff did not address and did not propose any adjustment for "rebound" effects as now proposed for the first time by the Office of Public Counsel in the direct testimony of Geoff Marke. Both the Staff and Ameren Missouri have pending motions to exclude Mr. Marke's direct testimony on "rebound" effects.

⁶ $NTG=1.00 - \text{free riders adjustment} + \text{participant spillover adjustment} + \text{nonparticipant spillover adjustment} + \text{market effects adjustment}$.

6. Mr. Rogers' direct testimony relies on the competent and substantial record of evidence contained in the PY2013 EM&V final reports of the Evaluators and the Auditor and their determination of annual energy savings and net benefits as well as the Change Requests of Ameren Missouri and Staff – the same record evidence that the Commission must also rely on to make its determination of annual energy savings and net benefits for PY2013. When evaluating the evidence before it, the Commission is called to exercise its discretion to determine a just and reasonable amount of PY2013 annual energy savings and net benefits. To determine whether the joint position is just and reasonable the Commission must first consider the points establishing the low and high range of energy savings and net benefits as determined by the Evaluators and the Auditor as well as the initial Change Requests of Ameren Missouri and Staff.

7. The exercise of Commission discretion to resolve this matter is analogous to that of the Commission's discretion in determining the appropriate return on equity ("ROE") in a general rate case proceeding. In the general rate case example the Commission typically establishes the low, middle, and high points setting the range of ROE values that are supported by the experts. Based on the weight of the evidence and credibility of each expert witness, the Commission makes its ROE determination by choosing an appropriate ROE within the established range of ROE values. This matter is no different. Here the Commission must exercise its discretion just as it would in making an ROE determination. Approval of the joint position (annual energy savings of 369,500 MWhs and an amount of \$129,925,000 net benefits for PY2013 of Ameren Missouri's MEEIA Cycle 1 demand-side programs) is a reasonable exercise of Commission discretion because it provides for a just settlement of the Change

Requests dispute. Both the PY2013 annual energy savings and net benefits are reasonable because the evidence shows they fall near the midpoint of the low and high range of values established by the EM&V technical experts, the Evaluators and Auditor as well as the low and high range of values of the initial Change Requests of Ameren Missouri and Staff.

8. Public Counsel's argument that the joint position ("Black Box proposal") is unsupported⁷ is not credible considering (1) the joint position falls nearly in the middle of the low and high points supported by the Evaluators and the Auditor and the initial Change Requests and (2) the Commission has ample discretion to make a just and reasonable determination that falls within a range of values supported by the competent and substantial record evidence in this case.

9. OPC's *Motion* fixates on the ambiguity of the term "Black Box" to describe the joint position. Staff understands the "Black Box" aspect of the compromise joint position as a term of art that describes the different thought processes and reasons explaining how Ameren Missouri and Staff chose, after considering their initial positions in light of the PY2013 EM&V final reports and the merits of other viewpoints, to abandon their initial Change Request positions and to move to their joint position – coming from different directions to a reasonable compromise of their initial positions.

10. In summary, the direct testimonies of Mr. Rogers and Mr. Voytas are necessary to inform the Commission and to explain how the data supporting the joint position is just and reasonable because it falls near the middle of the range of acceptable and appropriate EM&V values for PY2013 annual energy savings and net

⁷ Public Counsel's *Motion* para. 14.

benefits – a range of values developed from the competent and substantial record evidence in this case.

WHEREFORE, because the direct testimony of John Rogers is filed pursuant to the Commission's *Order Establishing Procedural Schedule to Consider the Program year 2013 Change Requests* and because Staff's direct testimony supports the joint position and is based on the PY2013 EM&V final reports of the Evaluators and the Auditor and the initial Change Requests of Ameren Missouri and Staff, the Staff respectfully requests that the Commission reject *Public Counsel's Motion To Exclude Portions Of The Testimony Of Staff Witness John Rogers And Ameren Missouri Witness Richard Voytas*.

Respectfully submitted,

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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 5th day of November, 2014 to all counsel of record in this proceeding.

/s/ Robert S. Berlin