

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

**MOTION TO EXCLUDE THE PORTION OF PUBLIC COUNSEL WITNESS GEOFF
MARKE’S DIRECT TESTIMONY REGARDING REBOUND EFFECTS**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, files this *Motion to Exclude the Portion of Public Counsel Witness Geoff Marke’s Direct Testimony Regarding Rebound Effects (“Motion”)* and asserts that Public Counsel’s newly proposed change request testimony supporting a nine percent downward adjustment for “rebound effects”¹ is an impermissible Change Request and is out of time under the terms agreed upon by all parties, including Public Counsel, in the Commission-approved *2012 Stipulation*² which settled Ameren Missouri’s MEEIA program. Further, the Staff seeks to exclude the portion of Public Counsel’s *Direct* testimony that raises – for the first time – a “rebound” effects adjustment applied to the EM&V³ results for PY 2013, and states:

¹ Mr. Marke defines “rebound” effects in his *Direct* testimony as involving “...increases in energy use that are paradoxically caused by increased energy efficiency. The result is a reduction of expected overall energy savings.” *Direct*, p. 6 Ins 5-6. Neither the *2012 Stipulation*, the initial Change Requests of Ameren Missouri and the Staff, or the final results of the EM&V Evaluators and independent Auditor address “rebound” effects.

² On July 5, 2012, the parties filed a *Unanimous Stipulation And Agreement Resolving Ameren Missouri’s MEEIA Filing* and on August 1, 2014 the Commission issued its *Order Approving Unanimous Stipulation And Agreement Resolving Ameren Missouri’s MEEIA Filing And Approving Stipulation And Agreement Between Ameren Missouri And Laclede Gas Company*, later amended on December 19, 2013 in the Commission’s *Order Approving Amendment to Stipulation And Agreement*, herein referred to as the “*2012 Stipulation*”. MEEIA is the Missouri Energy Efficiency Act.

³ EM&V is Evaluation, Measurement, and Verification of the Program Year 2013 (“PY 2013”) energy efficiency results achieved by Ameren Missouri.

1. The Office of Public Counsel (“OPC”) filed its *Direct Testimony of Geoff Marke (“Direct”)* on October 22, 2014, the date set out in the Commission’s October 8th *Order Establishing Procedural Schedule To Consider The Program Year 2013 Change Requests (“Change Requests Order”)*.

2. In his *Direct* testimony Mr. Marke calls for a “...9% downward adjustment to the Net to Gross (“NTG”) ratio for the Lightsavers Program to account for conservative direct rebound effect estimates...OPC raises the concept of the rebound effect as another factor that should be considered by the Commission when determining the EM&V results for PY2013...”.⁴ By requesting the Commission apply an extra 9 percent downward adjustment for “rebound” effects in his *Direct* testimony, instead of through a timely filed Change Request, which OPC did not do, Mr. Marke is taking unfair advantage of the stakeholders to the *2012 Stipulation*. In effect OPC is seeking its own Change Request in its *Direct* testimony by bootstrapping an improper adjustment to the EM&V results for PY 2013 – an adjustment that was not addressed by stakeholders in the *2012 Stipulation* and not addressed by either the EM&V Evaluators⁵ or the Commission’s independent Auditor⁶.

3. Under the *2012 Stipulation* OPC has no legal support to propound a new or even modified Change Request to the Commission as it is well beyond the July 3,

⁴ *Direct Testimony of Geoff Marke*, p. 2, Ins 2-5.

⁵ The EM&V Evaluators are The Cadmus Group, Inc. (“Cadmus”) and ADM Associates, Inc. (“ADM”). Cadmus was hired by Ameren Missouri to prepare and EM&V Report for each of the Company’s residential MEEIA Programs. ADM was hired by Ameren Missouri to prepare an EM&V Report for the Company’s commercial and industrial MEEIA Programs. While ADM mentions “rebound” in its Glossary as part of the definition of “secondary effects”, neither “rebound” or “secondary effects” is used in the report.

⁶ In accordance with Commission Rule 4 CSR 240-20.093(7), the Commission hired Johnson Consulting Group, LLC, (“Auditor”).

2014 filing deadline for Change Requests. By using its *Direct* testimony to inject into the case record an untimely Change Request – a Change Request for which there is no EM&V Evaluator or Auditor support - Public Counsel violates the very terms that it and the signatories agreed on which created the right and established the process for stakeholders to file a Change Request to EM&V results under the *2012 Stipulation*:

Any stakeholder group participant who wants a change to the impact evaluation portion of a 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 (“Change Request”). Any stakeholder group participant filing a Change Request will set forth all reasons and provide support for the requested change in its initial Change Request filing. Responses to a Change Request may be filed by any stakeholder group participant and are due 21 days after the Change Request is filed. The response should set forth all reasons and provide support for opposing or agreeing with the Change Request...(paragraph 11. EM&V. b.iv. of the 2012 Stipulation)

Only the *2012 Stipulation* contains a provision authorizing and governing the filing of Change Requests by stakeholders. The Commission’s rules contain no such provision. Further, the matter of addressing Change Requests to EM&V results is an issue of first impression for the Commission and is a matter for Commission enforcement of the *2012 Stipulation*. Staff points out no provisions exist to guide the Commission on bringing the EM&V Evaluators and the Auditor into an adversarial process – a process never intended to litigate their highly specialized final EM&V results in front of the Commission⁷. Enforcement of the *2012 Stipulation* is essential to ensuring fairness to all stakeholders and to minimize costly and time consuming litigation.

⁷ The Request for Proposal (“RFP”) contemplates that the Auditor may need to appear in front of the Commission to answer questions. However, there is no provision for pitting the Auditor and the Evaluators against each other in the hearing process.

4. On October 6, 2014, pursuant to the Commission's *Change Requests Order*, OPC filed its *Response*⁸ to the initial Change Requests filed by Ameren Missouri and the Staff on July 3, 2013. Only Ameren Missouri⁹ and the Staff¹⁰ filed Change Requests.

5. In its *Response*, Public Counsel recommended that the Commission adopt the Staff's initial Change Request and reject Ameren Missouri's initial Change Request.¹¹ It is most noteworthy that Public Counsel did not introduce its downward adjustment to the EM&V results for "rebound" effects in its *Response* – likely because Ameren Missouri and the Staff did not address "rebound" effects to the EM&V results.

6. On September 19, 2014, the Staff and Ameren Missouri filed a *Non-unanimous Stipulation and Agreement Settling the Program Year 2013 Change Requests* to settle the matter of the competing Change Requests to the EM&V results. On October 6, 2014 the Division of Energy filed its *Response to Change Requests*

⁸ *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, Appendix A. ("Response")*

⁹ *Ameren Missouri's Application*, para. 3, states "...Ameren Missouri hereby makes a formal Change Request with respect to the EM&V Reports. Specifically, Ameren Missouri seeks that the Reports be changed to correct the inaccurate measure (overstatement) of free ridership through the use of general survey questions, and also request that the Report acknowledge the importance of market effects. The changes result in an increase of kWh savings by 4,649,977 for residential customers and 826,629 kWh for business customers. In aggregate, Ameren Missouri's Change Request would increase overall portfolio savings by 5,512,606 kWh, increasing the total portfolio savings to 395,996,803 kWh."

¹⁰ *Staff's Change Request*, para. 7, states "Staff recommends the Commission accept Johnson Consulting's final EM&V Report with one exception. To investigate Cadmus' value of market effects on NTG [net to gross ratio], the Commission's Auditor [Johnson Consulting Group] conducted its own study with lighting sales data from Missouri retailers for the period 2009 through 2013. By doing so, the Commission's Auditor was able to determine a NTG including market effects for comparison to Cadmus' NTG, along with a NTG that excludes market effects. For the LightSavers program, Staff recommends the Commission accept Johnson Consulting' NTG for the LightSavers program that excludes market effects, and order an adjustment to any performance incentive award under the Stipulation to exclude any recovery by Ameren Missouri for market effects, not only for 2013, but also the years 2014 and 2015 covered by the Stipulation."

¹¹ Public Counsel's *Response*, p. 11, lns 20-24.

supporting the settled position as a “just and reasonable compromise of their Change Requests.” To the point, the compromise settlement falls nearly in the middle of the range of the EM&V values determined by the Evaluators and Auditor and the initial Change Request positions of Ameren Missouri and the Staff¹². Under terms of the *2012 Stipulation*, OPC may adopt and support either the initial Change Request of Ameren Missouri or the Staff. In its *Direct* case, Public Counsel may testify why it objects to the compromise settled position. But OPC is not entitled to offer up its own Change Request by tacking onto Staff’s initial Change Request an adjustment to EM&V results not previously addressed in either initial Change Requests.

7. OPC is limited by the contractual terms of the *2012 Stipulation* that it signed. Under these agreed on terms Public Counsel’s reply to the filed Change Requests is limited by the plain language of the agreement: ...*The response should set forth all reasons and provide support for opposing or agreeing with the Change Request.* (paragraph 11, *2012 Stipulation*). This means that Public Counsel can only support or oppose a filed Change Request. It is one thing for Public Counsel to adopt Staff’s initial Change Request and to proffer evidentiary support for it. It is an entirely different matter for Public Counsel to spring the surprise of a drastically modified Change Request including a 9% downward adjustment for “rebound” effects – an “effect” not a part of Staff’s initial Change Request which OPC purports to have adopted, and not dealt with in the final reports of the EM&V Evaluators and Auditor¹³,

¹² That the compromise settlement reached by Ameren Missouri and the Staff falls nearly in the middle of the range of EM&V values is amply demonstrated in the Direct testimonies of Company witness Richard A. Voytas and Staff witness John Rogers.

¹³ Mr. Marke admits in his *Direct* testimony that the EM&V Evaluators and the Auditor made “...no attempt to calculate the rebound effect in determining the net energy saving for Ameren Missouri’s MEEIA PY2013.” p. 7, lns 14-17.

and not addressed in the *2012 Stipulation*. Moreover, Mr. Marke's testimony on "rebound" effects is not relevant to the initial Change Request position adopted by Public Counsel, not relevant to the final reports of the Evaluators and Auditor, and not relevant to the compromised settled position supported by the Staff, Ameren Missouri, and the Division of Energy.

8. Further, no authority exists for Public Counsel to late file a newly proposed Change Request as it has done so in Mr. Marke's *Direct* testimony requesting a 9% downward adjustment for "rebound" effects to the NTG ratio to be applied to the EM&V results. If the Commission were to allow Mr. Marke's testimony on this adjustment it would put all signatories and stakeholders that have relied on the Commission-approved terms of the *2012 Stipulation* at a disadvantage. Ultimately the Commission and stakeholders would be harmed should the clear terms of the *2012 Stipulation* not be enforced and the Change Request that Public Counsel wished that it had filed on July 3, 2014 is allowed into the case record. Such an action would create an opening for all stakeholders to late file a Change Request creating a situation ripe for endless litigation – a situation the stakeholders clearly wished to avoid in the *2012 Stipulation*.

9. Accordingly, the Staff moves that the Commission exclude from the case record certain portions of the *Direct* testimony proffered by OPC witness Geoff Marke which supports or is otherwise related to the addition of a nine percent downward adjustment for "rebound effects" to its proposed Change Request, to wit:

- Page 2, lines 2 through 11.
- Page 4, line 24.
- Page 5, lines 1 through line 16.
- Page 6, lines 1 through 18.
- Page 7, lines 1 through 18.
- Page 8, lines 1 through 10.

Page 9, lines 1 through 6.
Page 10, lines 1 through 22.
Page 11, lines 1 through 20.
Page 12, lines 1 through 20.
Page 13, lines 1 through 23.
Page 14, lines 1 through 25.
Page 15, lines 1 through 22.
Page 16, lines 1 through 14, and lines 18 through 19 and 22 through 24.
Page 17, lines 1 through 2.
Attachment GM-1 "Energy Efficiency and the Rebound Effect: Background Readings (FN1)

WHEREFORE, for the reasons discussed above, Staff respectfully moves the Commission issue an order excluding the above-listed portions of Public Counsel witness Geoff Marke's direct testimony supporting or related to the matter of an adjustment for "rebound" effects.

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 29th day of October, 2014 to all counsel of record in this proceeding.

/s/ Robert S. Berlin