

**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 STAFF’S MOTION TO EXCLUDE

COMES NOW the Office of the Public Counsel (“Public Counsel”) and respectfully responds to the Staff of the Missouri Public Service Commission’s (“Staff”) motion to exclude:

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.¹ 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.²

2. On September 19, 2014, Staff and Ameren Missouri filed a non-unanimous stipulation and agreement proposing to settle the PY2013 Change Requests.³ Public Counsel objected to the non-unanimous stipulation and agreement on September 26, 2014.⁴ By Commission Rule, once Public Counsel objected to the non-unanimous stipulation and

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

² *Id.* at pp. 15-19.

³ Doc. No. 188.

⁴ Doc. No. 192.

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

3. Thereafter, the parties submitted competing procedural schedules to the Commission.⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰

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

⁵ 4 CSR 240-2.115(2)(D).

⁶ Doc. Nos. 195 & 196.

⁷ Doc. No. 196.

⁸ Doc. Nos. 197 & 205.

⁹ Doc. No. 206.

¹⁰ Doc. No. 206.

Missouri and Staff have recognized on various occasions that these are the issues before the Commission at present.¹¹

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 also filed direct testimony on October 22, 2014.¹² Within that testimony, Dr. Marke explains the "rebound effect" as it relates to overall energy savings."¹³

Staff's Motion

7. Staff requests that the Commission exclude portions of Public Counsel witness Dr. Geoff Marke's direct testimony regarding rebound effects.¹⁴ In support of this request, Staff attempts to characterize the testimony as a new change request that is out of time and in contravention of the agreed provisions of the 2012 Stipulation and Agreement.¹⁵ Further, Staff suggests the Commission's order should be interpreted as saying that Public Counsel may only offer evidence on "why it objects to the compromise settled position."¹⁶

8. 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.¹⁷ Moreover, to interpret the Commission's order as Staff suggests is illogical, continues to misapprehend the nature and impact of its black-box proposal, and contradicts the plain language of the order.

9. 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

¹¹ Doc. Nos. 165, 166, 167 & 188.

¹² Doc. No. 206; Doc. No. 211.

¹³ Doc. No. 211, p. 6.

¹⁴ Doc. No. 214.

¹⁵ *Id.*

¹⁶ Doc. No. 214, p. 5.

¹⁷ Doc. Nos. 196, 199 & 200.

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.”¹⁸ 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 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.¹⁹ 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.”²⁰ 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.

10. By seeking to exclude this testimony, Staff 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 Staff down the road of limiting its review of this evidence. The Commission should review the competent and substantial evidence tending to show what level of energy savings Ameren

¹⁸ See Doc. Nos. 196, 199, 200 & 206.

¹⁹ Doc. No. 206.

²⁰ Doc. No. 211, p. 6.

achieved in its MEEIA program and what the proper calculation of net shared benefits is.²¹ Importantly, Staff never argues – because it cannot – that rebound effects testimony is immaterial to these determinations.²²

11. 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, Staff’s motion to strike the testimony on rebound effects should be denied.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission to DENY the Staff’s motion to exclude.

Respectfully,

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²¹ 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, when 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?

²² Doc. No. 214.

CERTIFICATE OF SERVICE

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

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