

**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.    )            **Case No. EO-2012-0142**

**SECOND NON-UNANIMOUS STIPULATION AND AGREEMENT  
SETTLING THE PROGRAM YEAR 2013 CHANGE REQUESTS**

**COME NOW** Staff of the Missouri Public Service Commission (“Staff”), Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and Office of the Public Counsel (“OPC”) (collectively the “Signatories”) and submit to the Missouri Public Service Commission (“Commission”) for its approval the following Non-Unanimous Stipulation and Agreement (“Stipulation”) resolving the matter of the competing change requests filed by Ameren Missouri and Staff and resolving OPC’s concerns related to the evaluation, measurement and verification (“EM&V”) of the Company’s energy efficiency measures. In support thereof, the Signatories respectfully state as follows:

**Background**

1. On July 5, 2012, Ameren Missouri and other interested parties to this case submitted to the Commission for its approval a Unanimous Stipulation and Agreement (“2012 Stipulation”) related to the Company’s implementation of its Missouri Energy Efficiency Investment Act (“MEEIA”) programs. The Commission issued orders approving the 2012 Stipulation on August 1, 2012, and as amended on December 19, 2012. The 2012 Stipulation contained provisions related to the EM&V of energy

efficiency measures undertaken by the Company and included procedures whereby a party may request changes to the Final EM&V Report for each year.<sup>1</sup>

2. On June 12, 2014, Cadmus and ADM, the EM&V evaluators of Ameren Missouri's MEEIA programs, filed their updated third final revised program year 2013 ("PY2013") EM&V reports with the Commission.

3. On July 2, 2014, Johnson Consulting Group, the Commission's independent auditor filed its PY2013 *EM&V Auditor Final Report and Appendix A: Auditor Market Effects Sales Analysis*. Johnson Consulting Group later filed its updated third final PY2013 EM&V Auditor Report and Supporting Documentation on August 27, 2014.

4. On July 3, 2014, the Staff filed *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>2</sup>

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<sup>1</sup> In pertinent part, the 2012 Stipulation provided as follows: "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. Within two business days after the deadline for filing a Change Request (if a Change Request is filed) the Signatories agree that the stakeholder group participants will hold a conference call/meeting to agree upon a proposed procedural schedule that results in any evidentiary hearing that is necessary to resolve the Change Request to be completed within 60 days of the filing of the Change Request, and which will recommend to the Commission that the Commission issue its Report and Order resolving the Change Request within 30 days after the conclusion of such a hearing."

<sup>2</sup> 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

5. Ameren Missouri filed an *Application For Approval of Change Request* (“Application”) on July 3<sup>rd</sup> seeking to make certain changes to the EM&V reports that were filed by the Company’s independent third party evaluators, Cadmus and ADM.<sup>3</sup>

6. On July 17, 2014, the Commission issued its *Order Establishing Procedural Schedule to Consider Change Requests* to set the matter of the PY2013 change requests for Commission determination. On August 20, 2014, the Commission issued its *Order Staying Procedural Schedule* on motion of the Company and Staff to allow the parties additional time to conduct settlement discussions.

7. On September 19, 2014, the Staff and the Company filed a *Non-unanimous Stipulation and Agreement Settling the Program Year 2013 Change Requests* (“Change Request Stipulation”) that included a compromise position to resolve the competing change requests filed by Staff and the Company on July 3, 2014.

8. On September 26, 2014, OPC filed an objection to the Change Request Stipulation and requested an evidentiary hearing to resolve the disputed EM&V results for PY 2013.

9. On October 8, 2014, the Commission established a procedural schedule to resolve the disputed issues in the case. To date, Staff, the Company, and OPC have filed direct, rebuttal, and surrebuttal testimony.

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recovery by Ameren Missouri for market effects, not only for 2013, but also the years 2014 and 2015 covered by the Stipulation.”

<sup>3</sup>The Company’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.”

## **Issues Settled**

10. This Stipulation is offered to resolve all disputed differences in the EM&V results for PY2013, and to provide a method for more expeditious resolution of EM&V differences and potential EM&V disputes for PY 2014 and PY 2015. The parties further agree that any particular methodology employed and left uncontested by operation of this Stipulation shall have no precedential value, and that this Stipulation may not be held out by any party to this Stipulation to argue for continued use of that particular methodology on the basis that it was used for years PY 2013, PY 2014, and/or PY 2015 pursuant to this Stipulation.

11. Resolution of PY 2013 dispute:

- a) The Signatories agree to portfolio-wide mega-watt hours savings of 347,360.
- b) The Signatories agree to net shared benefits of \$123,646,681.
- c) The Signatories make no further agreements with respect to any of the issues currently in dispute.

12. Process change to avoid dispute with respect to EM&V annual energy savings and annual net shared benefits for PY 2014 and PY 2015:

- (a) In each individual year (PY 2014 and PY 2015), the final evaluator and auditor portfolio-wide energy savings Net-To-Gross ratios ("NTG") shall be averaged for the respective program year. If the portfolio-wide averaged energy savings NTG is between 0.9 and 1.1, then the agreed to NTG will be deemed to 1.0, and the portfolio-wide program year net annual energy savings and annual

net shared benefits will be calculated consistent with a portfolio-wide NTG of 1.0 for the evaluators' program year final EM&V reports.

(b) If the final evaluator and auditor averaged savings calculations result in a portfolio-wide average energy savings NTG lower than 0.9 or higher than 1.1, the parties are free to file change requests, initiate litigation or otherwise contest the program year EM&V results in a manner consistent with Paragraph 11. b. iv. of the 2012 Stipulation.

13. The EM&V reporting process will be in accordance with Paragraph 11. b. of the 2012 Stipulation. Specifically for 2014 and 2015:

(a) the evaluators' draft EM&V reports will be provided to stakeholders no later than 45 days after the end of each program year.

(b) 60 days after circulation of the draft EM&V report, the auditor and each stakeholder group participant will provide any comments and recommendations for report changes to the EM&V contractors and to all other stakeholder group participants. A meeting to discuss all submitted comments and recommendations concerning report changes will be held within this same 60-day period.

(c) 30 days after the deadline for comments and recommendations for report changes, the final EM&V reports, with the evaluators' NTG to be used as the first component for calculation of the portfolio-wide average NTG will be provided to all stakeholder group participants by the EM&V contractors.

(d) In addition to the EM&V reporting process in the 2012 Stipulation, the auditor shall provide a final recommendation on the portfolio NTG, to be used as the

second component for calculation of the portfolio-wide average NTG, no later than 7 days after the evaluators' final reports.

14. The Signatories understand and agree that the evaluators and auditor shall be free of any unilateral persuasion, pressure, advocacy, encouragement or other communication suggesting, directly or indirectly, a particular NTG outcome on a measure or methodology used to determine NTG, at a program or portfolio level, provided, however, the Signatories may discuss or communicate with the auditor and evaluator as part of the stakeholder process concerning the methods applied or outcomes reached.<sup>4</sup> Ameren Missouri shall make arrangements for two live calls with evaluators that are open to stakeholders. The auditor will participate in these calls. The calls shall be scheduled after the draft evaluators' EM&V reports are provided, but before the final auditor EM&V report is issued. If all parties agree, either or both calls may be canceled. This provision is intended to ensure the final EM&V results reached by the evaluator and auditor reflect their respective professional judgments, and their judgments alone. Nothing in this provision is intended to preclude any stakeholder from engaging in the normal course of discovery. Nothing in this provision is intended to discourage stakeholder dialogue, including or excluding the evaluators and auditor, concerning pending or past EM&V results.

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<sup>4</sup> "Stakeholder process" as used here means only the opportunities for joint stakeholder discussion with the evaluators and/or auditor, limited to: 1) the comments provided to all stakeholders described in paragraph 11.b.ii of the 2012 Stipulation, 2) the meeting described in paragraph 11.b.iii of the 2012 Stipulation, 3) the conference call/meeting described in paragraph 11.b.iv of the 2012 Stipulation, 4) the quarterly meetings described in paragraph 14 of the 2012 Stipulation, 5) the comments provided to all stakeholders described in paragraph 13(b) of this Stipulation, 6) the meeting provided in paragraph 13(b) of this Stipulation, and 7) the two live phone calls that are open to all stakeholders as provided in paragraph 14 of this Stipulation. Signatories acknowledge that communications with the evaluator and/or auditor limited to program administration are permitted so long as such communications do not attempt to persuade, pressure, advocate, encourage or suggest, directly or indirectly, a particular NTG outcome on a measure or methodology used to determine NTG, at a program or portfolio level.

15. Any program evaluator, auditor, or stakeholder may be made aware of this Stipulation and its terms as part of any MEEIA stakeholder process. The Signatories agree that upon execution this Stipulation is no longer confidential.

### **General Provisions**

16. This Stipulation is being entered into for the purpose of disposing of the issues that are specifically addressed herein. In presenting this Stipulation, none of the Signatories shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including, without limitation, any method of cost or revenue determination or cost allocation or revenue related methodology, and none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation (whether it is approved or not) in this or any other proceeding, other than a proceeding limited to enforce the terms of this Stipulation, except as otherwise expressly specified herein.

17. This Stipulation has resulted from extensive negotiations and the terms hereof are interdependent. If the Commission does not approve this Stipulation, or approves it with modifications or conditions to which a party objects, then this Stipulation shall be void and no signatory shall be bound by any of its provisions.

18. If the Commission does not unconditionally approve this Stipulation without modification, and notwithstanding its provision that it shall become void, neither this Stipulation, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process

rights as fully as though this Stipulation had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

19. If the Commission unconditionally accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2000; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2000; (3) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000 and (4) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2011. These waivers apply only to a Commission order respecting this Stipulation issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation.

20. This Stipulation contains the entire agreement of the signatories concerning the change request issues addressed herein.

21. This Stipulation does not constitute a contract with the Commission. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this



Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

**WHEREFORE**, the undersigned Signatories respectfully request the Commission issue its order approving this Stipulation subject to the specific terms and conditions contained herein.

Respectfully submitted,

**/s/ Robert S. Berlin**

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**Office of the Public Counsel**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been electronically mailed this 11th day of February, 2015 to all counsel of record in this proceeding.

**/s/ Robert S. Berlin**