

**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) File No. EO-2012-0142
Changes in Furtherance of Energy Efficiency as)
Allowed by MEEIA)

**MISSOURI DIVISION OF ENERGY’S
RESPONSE TO OPC’S MOTION TO EXCLUDE**

COMES NOW the Missouri Department of Economic Development –
Division of Energy¹ (“DE”) and, through counsel, responds to *Public Counsel’s Motion To Exclude Portions Of The Testimony of Staff Witness John Rogers and Ameren Missouri Witness Richard Voytas* (“OPC’s Motion to Exclude”) filed in the above-styled matter. For its Response, DE states as follows:

The 2012 *Unanimous Stipulation and Agreement Resolving Ameren Missouri’s MEEIA Filing* (“Original Stipulation”) set up a process whereby signatories could request changes to the MEEIA program EM&V report within 21 days after its completion.² The Original Stipulation further provides that the Commission can “resolve the Change Request,” if disputed.³ By their *Non-Unanimous Stipulation and Agreement Proposing to Settle the PY2013 Change Requests* (“Change Requests Stipulation”), Ameren and Staff resolved their respective Change Requests into a unified joint position. OPC objected to the

¹ Effective August 29, 2013, Executive Order 13-03 transferred “all authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Energy from the Missouri Department of Natural Resources to the Missouri Department of Economic Development”

² Doc. No. 119, ¶ 11.b.

³ *Id.* ¶ 11.b.iv.

Change Requests Stipulation and now opposes the joint position that the Change Requests Stipulation represents.

Staff⁴ and Ameren⁵ each filed a motion seeking to exclude portions of OPC testimony. DE concurs with the rationale and relief requested in those motions.

OPC also filed a Motion to Exclude. OPC's Motion to Exclude claims that all testimony referring to Staff's and Ameren's Change Requests Stipulation, is "irrelevant to the resolution of any factual issue in this case."⁶ OPC states the relevant issues as "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?"⁷

The joint position, however, as illustrated by the Change Requests Stipulation, is the very content of the jointly requested change, and is *ipso facto* "relevant to the question of whether any change request should be adopted."⁸ Indeed, the joint position directly answers the issue questions presented by OPC, with explanation of why such figures are justified. Evidentiary law does not dictate whether Staff and Ameren witnesses should state their position in a vacuum or state it with reference to the Change Requests Stipulation for illustrative purposes.

OPC also summarizes, with some editorial liberty, the Commission's *Order Establishing Procedural Schedule to Consider the Program Year 2013 Change Requests* ("Scheduling Order") as "clear that the Black-box proposal *does not* create a factual issue to

⁴ Staff's Motion to Exclude the Portion of Public Counsel Witness Geoff Marke's Direct Testimony Regarding Rebound Effects, Doc. No. 214 (Oct. 29, 2014).

⁵ Ameren's Missouri Motion to Strike Portions of the Direct Testimony of Geoff Marke, Doc. No. 219 (Oct. 31, 2014).

⁶ OPC's Motion to Exclude, ¶ 8 & 11.

⁷ *Id.* ¶ 11.

⁸ Order Establishing Procedural Schedule to Consider the Program Year 2013 Change Requests, Doc. No. 206

be resolved in this case.”⁹ But OPC misstates the Commission’s Scheduling Order, which, to the contrary, forecloses the issue of “whether the Commission should approve the non-unanimous stipulation and agreement submitted by Staff and Ameren Missouri.”¹⁰ The Commission did not foreclose the use of illustrative evidence to aid in explaining the joint position on EM&V changes. Accordingly, Staff and Ameren witnesses refer to the Change Requests Stipulation to help articulate their joint position on the issues; not to present the document itself as a per se issue or an item for formal Commission approval.

To the extent the witnesses are less than clear in their remarks about the Change Requests Stipulation, the Commission should read the testimony with an understanding of the relief that the testimony is intended to support—approve the jointly proposed EM&V changes, the articulation of which is aided by reference to the Change Requests Stipulation. The Commission should avoid the overeager practice, propounded by OPC, of striking testimony based upon the potential for improved word choice.

OPC’s Motion to Exclude invites the Commission down a semantic rabbit hole leading to neither enhanced fairness nor judicial efficiency. DE recommends that the Commission refrain from giving chase.

⁹ OPC’s Motion to Exclude, ¶ 13.

¹⁰ Order Establishing Procedural Schedule to Consider the Program Year 2013 Change Requests, Doc. No. 206

Respectfully submitted,

/s/ Jeremy Knee _____

JEREMY D. KNEE

Missouri Bar No. 64644

Associate General Counsel

Missouri Department of

Economic Development

P.O. Box 1157

Jefferson City, Missouri 65102

Phone: 573-522-3304

Fax: 573-526-7700

Attorney for Missouri DED

Division of Energy

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 5th day of November, 2014.

/s/ Jeremy Knee _____