STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of December, 2011.

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff Filing to Implement Changes to Its Business Electric Energy Efficiency Programs	))))	**File No. ET-2012-0156** Tariff No. YE-2012-0231

NOTICE REGARDING TARIFF FILING

Issue Date: December 14, 2011

On November 18, 2011, Union Electric Company, d/b/a Ameren Missouri, filed a tariff designed to implement changes to its business energy efficiency programs. That tariff carries a December 18 effective date.[1]

The roots of this tariff filing go back to Ameren Missouri's most recent rate case, ER-2011-0028. In that case, Ameren Missouri threatened to drastically reduce its spending on energy efficiency programs unless the Commission approved its proposed revenue recovery plan. The Commission refused to approve that plan in the rate case and Ameren Missouri responded by allowing all its energy efficiency tariffs to expire on September 30, 2011. Currently, Ameren Missouri has no business electric energy efficiency tariffs in effect.

[1] Ameren Missouri's tariff filing before the Commission in this case is the business equivalent of the residential tariff that the Commission allowed to go into effect by operation of law on November 24 in File No. ET-2012-0011.

Ameren Missouri indicates the proposed tariff is designed to bridge the gap between the expiration of its former energy efficiency programs, which expired on September 30, and the Commission's issuance of an order regarding Ameren Missouri's Missouri Energy Efficiency Investment Act (MEEIA) filing, which the company intends to file sometime in the first quarter of 2012. In the MEEIA filing Ameren Missouri will presumably propose a new cost recovery mechanism for the Commission's consideration.

Ameren Missouri's tariff would take effect on December 18, and will expire on June 30, 2012. The tariff would allow Ameren Missouri to spend approximately $5.1 million on business energy efficiency programs, a substantial reduction from its former spending level of $42.4 million.

On December 8, the Commission's Staff filed a recommendation regarding Ameren Missouri's tariff. Staff expresses concern that Ameren Missouri's drastic reduction in spending will reduce the availability of cost-effective energy efficiency measures that are desired by Ameren Missouri's customers. Staff also asks that Ameren Missouri make its MEEIA filing by January 31, 2012, to allow the Commission sufficient time to approve that MEEIA plan before the tariff expires on June 30, 2012. Despite its concerns, Staff recommends the Commission approve Ameren Missouri's tariff, or allow it to go into effect by operation of law, on the basis that an inadequate tariff is better than no tariff at all.

The Missouri Department of Natural Resources (MDNR) also filed a recommendation on December 8. MDNR shares Staff's concern about Ameren Missouri's tariff, but agrees that, despite its problems, a flawed tariff is preferable to no tariff at all. MDNR advises the Commission to allow Ameren Missouri's tariff to go into effect by operation of law.

On December 8, Public Counsel filed a motion asking the Commission to reject Ameren Missouri's tariff as wholly inadequate to meet the company's obligation to offer energy efficiency programs for the benefit of its ratepayers. Furthermore, Public Counsel urges the Commission to order Ameren Missouri to immediately file new tariffs to re-institute the residential and business energy efficiency programs that Ameren Missouri allowed to expire in September 2011.

Public Counsel claims that the Commission has the authority and indeed the duty to compel Ameren Missouri to spend more on energy efficiency to benefit its customers at the expense of its shareholders. However, Public Counsel cites no legal authority that would allow the Commission to order Ameren Missouri to spend additional money on energy efficiency without a means by which the company can recover those costs. Such a means of recovery will not be available until Ameren Missouri submits and the Commission approves a cost recovery plan under MEEIA. In fact, the law is clear that the Commission "is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership."[2] As a result, the Commission cannot confiscate the property of Ameren Missouri's shareholders for the benefit of its ratepayers.

Rejecting or suspending Ameren Missouri's tariff would deprive ratepayers of even the reduced energy efficiency benefits to be derived from that limited tariff without any ability to force Ameren Missouri to immediately spend more money on energy

[2] *State ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n*, 262 U.S. 276, 289 (1923)

efficiency programs. Therefore, nothing is to be gained by rejecting or suspending the tariff.

The Commission is not - as it previously indicated in its notice regarding Ameren Missouri's residential tariffs - powerless in these matters. While it cannot assume management control of the company by ordering Ameren Missouri to spend additional money on energy efficiency programs, Ameren Missouri at some point in the future will once again come before the Commission in a rate case. At that time, the Commission will look closely at the company's willingness to reduce the long-run cost of providing service to its ratepayers by pursuing energy efficiency, as well as the prudence of any decisions Ameren Missouri may make to obtain additional energy supplies that might not be needed if energy efficiency programs were appropriately implemented.

For purposes of this case, the Commission agrees with its Staff and DNR that even an inadequate energy efficiency tariff is better than no tariff at all. The Commission will not approve that inadequate tariff, but will take no action to prevent it from going into effect by operation of law on its effective date, December 18, 2011.

BY THE COMMISSION

(S E A L)

Steven C. Reed
Secretary

Gunn, Chm., Davis, Jarrett, and
Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge