

1           BEFORE THE PUBLIC SERVICE COMMISSION

2                   STATE OF MISSOURI

3                                 \_\_\_\_\_  
4           TRANSCRIPT OF PROCEEDINGS

5                   Prehearing Conference

6                                 July 21, 2011

7                   Jefferson City, Missouri

8                                 Volume 1

9                                 \_\_\_\_\_  
10          In the Matter of

11          The Union Electric Company's    )

12          (d/b/a Ameren Missouri) Gas     )

13          Service Tariffs Removing        )File No. GT-2011-0410

14          Certain Provisions For Rebates)

15          From Its Missouri Energy        )

16          Efficient Natural Gas            )

17          Equipment And Building Shell    )

18          Measure Rebate Program          )

19                                 \_\_\_\_\_  
20                   KENNARD JONES, Presiding

                               SENIOR REGULATORY LAW JUDGE

21  
22                                 \_\_\_\_\_  
23  
24          REPORTED BY:

                  NANCY L. SILVA, RPR, CCR

25          TIGER COURT REPORTING, LLC

## A P P E A R A N C E S

WENDY TATRO

1901 Chouteau Avenue

St. Louis, Missouri 63166

314.554.2010

FOR: AmerenUE

MARC POSTON

Office of the Public Counsel

200 Madison Street

P.O. Box 2200

Jefferson City, Missouri 65102

573.751.5558

FOR: Office of Public Counsel and the Public

SARAH MANGELSDORF

Office of the Attorney General

P.O. Box 899

Jefferson City, Missouri 65102

573.751.0052

FOR: Missouri Department of Natural Resources

MEGHAN McCLOWRY

ANNETTE SLACK

HENRY WARREN

Missouri Public Service Commission

P.O. Box 360

Jefferson City, Missouri 65102

573.751.6651

FOR: Staff of the Missouri Public Service

Commission

1 JUDGE JONES: Let's go ahead and go  
2 on the record. I'm going to ask people in 305  
3 to either be closer to the speaker or speak up a  
4 little bit because I can hear you, but just  
5 barely. We won't be very long.

6 Let's go ahead and go on the  
7 record. We're on the record with the prehearing  
8 conference of Case No. GT-2011-0410. My name is  
9 Kennard Jones. I'm the Regulatory Law Judge  
10 assigned to this matter.

11 At this time let's take entries of  
12 appearance, beginning with Staff.

13 MS. McCLOWRY: Meghan McCLOWRY and  
14 Annette Slack for the Staff of the Public  
15 Service Commission. Our business address is  
16 P.O. Box 360, Jefferson City, Missouri 65102.

17 JUDGE JONES: And from the Office of  
18 Public Counsel.

19 MR. POSTON: Mark Poston, appearing  
20 for the Office of the Public Counsel and the  
21 public.

22 JUDGE JONES: Missouri Department of  
23 Natural Resources.

24 MS. MANGELSDORF: Sarah Mangelsdorf  
25 appearing for the Missouri Department of Natural

1 Resources.

2 JUDGE JONES: And Ameren Missouri.

3 MS. TATRO: Wendy Tatro, 1901  
4 Chouteau Avenue, St. Louis, Missouri 63103.

5 Also Judge, I have with me today our  
6 manager of energy efficiency for Ameren  
7 Missouri, Dan Laurent -- that's L-a-u-r-e-n-t --  
8 Greg Lovett, and Kyle Shoff.

9 JUDGE JONES: Okay. Thank you.

10 I'm going to leave you-all to kind  
11 of work this out, but I do have a couple of  
12 questions I want to ask. I'm assuming everyone  
13 there has a copy of the stip and agreement from  
14 Case No. GR-2010-0363.

15 MS. TATRO: Ameren Missouri does,  
16 your Honor.

17 MS. SLACK: Yes.

18 JUDGE JONES: Okay. And can we look  
19 at the relevant paragraph? I guess that's six  
20 and then subparagraph D. And at the very end of  
21 that paragraph, the last sentence says,  
22 Participation in the groups will not affect the  
23 parties' right to question prudence of the  
24 planning and/or the limitation of energy  
25 efficiency programs in future cases. Does

1 "future cases" mean rate cases?

2 MS. SLACK: Judge, you're fading. We can  
3 hardly hear you.

4 JUDGE JONES: Does "future cases" in  
5 paragraph B [sic] under paragraph six mean "rate  
6 cases"?

7 MS. TATRO: Well, this is Wendy Tatro for  
8 Ameren Missouri, and it is our belief that it does  
9 mean "rate cases" because that's when a prudence  
10 decision is typically made regarding, you know,  
11 recovery of costs and how the company acted, so that  
12 would be my belief.

13 JUDGE JONES: Mr. Poston, what's your  
14 understanding of that term?

15 MR. POSTON: I would say in any other case  
16 that involves planning, implementation of the energy  
17 efficiency programs, we would have any right to  
18 question prudence in any other case. I don't think  
19 it's narrowed to any rate case.

20 JUDGE JONES: And I'm assuming Staff is  
21 the same way as OPC.

22 MS. SLACK: Yes.

23 MS. McCLOWRY: Yes.

24 JUDGE JONES: Now, looking at paragraph H,  
25 it says, In the next general rate proceeding an

1 energy efficiency expense may be reviewed and/or  
2 challenged on the basis of prudence.

3 I realize that D and H are not necessary  
4 in conflict with one another, but why does H narrow  
5 paragraph D? I mean, H isn't necessary if D would  
6 also cover H. I mean, do you all at least agree with  
7 that reasoning?

8 MR. POSTON: I don't think it narrows. I  
9 think it just repeats a portion of what is stated  
10 earlier. I don't see that narrowing it to say that  
11 we're only limited to general rate proceedings to  
12 challenge prudence.

13 JUDGE JONES: I understand what you mean,  
14 Mr. Poston. So in effect, then, paragraph H isn't  
15 necessary, is it? By that -- reading it, it's not  
16 necessary.

17 MS. McCLOWRY: This is Meghan for Staff,  
18 and we just -- talking to Henry Warren, he thinks  
19 that H narrows it to only "expense."

20 JUDGE JONES: Okay. Now, let's see. I  
21 had a couple other questions. When you-all were  
22 negotiating this stip and agreement, you talk about  
23 programs and you talk about measures, and I know that  
24 that's an issue.

25 Did you-all consider the distinction

1           between those two when Ameren filed the tariff?

2                   MR. WARREN:  Yes.  Judge, this is Henry  
3           Warren, Staff.  Yes, we did consider what programs  
4           were and what measures were when we negotiated this.

5                   JUDGE JONES:  You did?

6                   MR. WARREN:  Yes.

7                   JUDGE JONES:  Okay.  Okay.

8                   Now, Mr. Poston, in your motion you state  
9           that -- it sounds like you need more time to review  
10          this, which is your primary motivator for wanting to  
11          suspend it or reject it, you need more time.

12                  MR. POSTON:  Well, I mean, yeah, we would  
13          like to conduct discovery.  You know, if this does  
14          continue to a hearing and Ameren files direct  
15          testimony, we'd want to -- you know, additional  
16          opportunity to do discovery in whatever they file in  
17          direct so, yeah, we'd like more time just to study  
18          what they have studied as far as their reasoning, the  
19          analysis they've done and those kind of things.

20                  JUDGE JONES:  What if you disagree with  
21          their conclusions that some of the measures that  
22          they've eliminated are inefficient?  What if you  
23          disagree with that?

24                  MR. POSTON:  Then we each present our  
25          evidence to the Commission and the Commission

1 decides.

2 JUDGE JONES: In a stip and agreement,  
3 Ameren has the last say on that issue, don't they?

4 MR. POSTON: Well, I would say the  
5 Commission has the last say if a party challenges  
6 what Ameren's doing.

7 JUDGE JONES: Well, I mean, what does it  
8 mean in paragraph D where it says, Ameren Missouri  
9 shall be responsible for all final decisions  
10 regarding natural gas energy efficiency programs?

11 MR. POSTON: That means they don't need a  
12 unanimous vote from the collaborative to take an  
13 action, but that doesn't remove any party's right to  
14 challenge what they're doing.

15 JUDGE JONES: Okay. And also I know that  
16 the program is supposed to go -- going to be --  
17 should continue through December 31, 2012. That  
18 doesn't necessarily mean no changes can occur prior  
19 to that, does it?

20 I know Ameren's answer to that question.  
21 I want to know what Staff and OPC and DNR thinks.

22 MR. WARREN: Yeah. This is Henry Warren  
23 from Staff. No, we did not anticipate that the --  
24 there would not be changes. I think we -- given the  
25 context of the stip and agreement and the goal to



1 reach one half of one percent of revenues in the  
2 expenditures, I think it was anticipated there would  
3 be changes, but I think there was a general  
4 expectation that the changes would be to augment  
5 program -- you know, augment the programs and the  
6 measures rather than diminish them.

7 JUDGE JONES: Okay. Well, do you agree  
8 that if a measure's inefficient it should be taken  
9 out?

10 MR. WARREN: If a measure -- well, I think  
11 in the context of the stip and agreement that the --  
12 that it provides for the evaluation of measures at  
13 the end of this -- at the end of this calendar year  
14 and that that is the point at which -- when we have  
15 hard data on the -- on what has actually been  
16 implemented, that that's when the decision is made.

17 JUDGE JONES: It sounds like you're saying  
18 Ameren jumped the gun.

19 MR. WARREN: Yes, sir.

20 JUDGE JONES: Let me ask you, Ms. Tatro:  
21 Why did Ameren decide to evaluate the programs and  
22 measures?

23 MS. TATRO: Well, what Ameren did -- and  
24 this goes back to the change, I think, in the type of  
25 group. You know, before it was a collaborative where

1 all the parties together agreed upon what programs  
2 and measures should be implemented, and now it's been  
3 changed to an advisory group, and Ameren's  
4 responsible for the decisions, as you pointed out,  
5 and in 6(b) it says, In order to spend approximate--  
6 you know, the .5 percent goal for expenditures  
7 prudently incurred on cost-effective programs, so the  
8 approach we took, your Honor, was to treat it much  
9 more like we do with our electric energy efficiency  
10 programs, and it is very standard to do TRC  
11 calculations of a program.

12 In fact, typically what you do is you do  
13 a TRC to decide whether you should go forward with  
14 the programs. These programs were already in  
15 existence because of the way the collaborative had  
16 been set up, but we thought it was prudent for us to  
17 calculate a TRC, and some of these measures scored  
18 very low with that information, your Honor.

19 It would not be prudent for us to  
20 continue spending money on them. We have an  
21 obligation, not only because of the stipulation and  
22 agreement, but as a good steward of our customers'  
23 money.

24 JUDGE JONES: Well, yeah, but why did you  
25 decide to look at the program in the first place to

1 even find out that they may or may not be  
2 inefficient?

3 MS. TATRO: Because we believe the  
4 stipulation and agreement put that burden upon us.

5 JUDGE JONES: To do that at this juncture,  
6 it sounds like there's a disagreement about that.

7 MS. TATRO: If the Commission tells us  
8 they disagree, you know, that would be one thing, but  
9 I don't think it is typical or standard procedure to  
10 implement a program, wait till evaluation and not to  
11 be the first time you ever looked at whether or not  
12 something is cost-effective.

13 Typically this is something you kind of  
14 do along the way. You do it initially. You come up  
15 with your cut of programs that you think are cost-  
16 effective, and we're not doing anything different  
17 than that, so that's why we believe we're taking the  
18 prudent course of action.

19 JUDGE JONES: That tariff was just  
20 approved, what, back in February or January, six  
21 months ago; right?

22 MS. TATRO: Well, I think it took  
23 effect -- was probably in February, so after that we  
24 did -- so that's more like four months ago. We did  
25 the TRC work. We've had several conversations with

1 the stakeholders, come back and forth.

2 JUDGE JONES: Well, let me ask you this:  
3 The parties to the agreement, when I have to -- I'm  
4 assuming everyone was on-board with the tariff that  
5 was in effect back in February, and it seems like  
6 that measures and programs, the efficiency of them  
7 would've been considered at that time.

8 I mean, did you-all consider efficiency  
9 of the programs and measures before the tariff, you  
10 know, went into effect?

11 MR. WARREN: This is Henry Warren, Staff.

12 Yes, we did.

13 JUDGE JONES: But now Ameren's looked at  
14 the exact same thing and determined that it's  
15 inefficient?

16 MR. WARREN: No, they have -- they have  
17 brought in additional information. We -- we first  
18 looked at these programs probably back in 2010, and I  
19 think they were actually implemented before -- I  
20 think we looked at them back in 2009 as well.

21 JUDGE JONES: And so what you're saying,  
22 Mr. Warren, is that Ameren has looked at information  
23 gathered since the effective date of the tariff.

24 MR. WARREN: Yes.

25 JUDGE JONES: And Ms. Tatro, is that true?

1 MS. TATRO: I do think that's partially  
2 true. I think part of the answer is, also, in terms  
3 of the tariffs that we originally filed were still  
4 part of the collaborative, and it was the group that  
5 the collaborative wanted, and we kind of continued  
6 that as part of the settlement discussions, so I  
7 think we probably looked at it more rigorously after  
8 we had sole responsibility, because we think the  
9 language of the stip that says "cost-effective"  
10 imposes that obligation upon us.

11 I think TRCs -- let me try to clarify. I  
12 think TRCs might've been looked at in the past, but I  
13 think it was not the primary criteria for deciding  
14 which program to implement. Now the criteria is  
15 cost-effective, and that's what we're trying to do.

16 JUDGE JONES: Okay. Let's talk about the  
17 issue of the 60-day notice. Have these tariff pages  
18 been passed around prior to being filed as required  
19 by the stip and agreement?

20 MR. POSTON: Not all of them, Judge.

21 JUDGE JONES: Not all of them?

22 MS. TATRO: Well, I -- I would disagree.  
23 There were two different versions that were passed  
24 around, and then -- I'm sorry. I think someone else  
25 is talking, or was that backfeed from me? I'm

1       sorry. I'll try again.

2               I think there was two different versions  
3       that were passed around, and then after receiving an  
4       e-mail from one of the stakeholders saying -- their  
5       intention was to ask us to include more, but they  
6       pointed out there was TRC less than one that we  
7       hadn't removed, so we made that change and made the  
8       filing, so it was not -- and we informed them we were  
9       doing that prior to it being filed, but the final  
10      tariff that got filed with the last change, we just  
11      informed them of the change.

12             JUDGE JONES: Okay.

13             MR. WARREN: This is Henry Warren, Staff.

14             I agree with Ms. Tatro, that the tariffs  
15      as filed were not circulated.

16             JUDGE JONES: I see. So it sounds like,  
17      though, she made changes consistent. I believe that  
18      was with OPC's suggestions. Mr. Poston; is that  
19      correct?

20             MR. POSTON: Well, I mean, we had ceased  
21      trying -- you know, make it look like it was our  
22      idea, but the actual tariff that's before the  
23      Commission now, all the measures that they are  
24      removing -- proposing to remove were not circulated  
25      to the parties before they filed that tariff.

1 JUDGE JONES: Okay. Well, it sounds like  
2 we're going to have matters of fact and law in this  
3 case, so I guess you-all can see what you can work  
4 out or what you can't work out. I don't think we'll  
5 need prefiled testimony, do we?

6 MS. TATRO: Ameren Missouri does not  
7 believe so.

8 JUDGE JONES: Does anyone else believe we  
9 need prefiled testimony? Doesn't sound like it.

10 MR. POSTON: Well, yeah, we would like  
11 filed testimony in this case. We'd like to see -- we  
12 want them to put forward their evidence and give us  
13 an opportunity to conduct discovery on that. We do  
14 it live, we won't have that opportunity.

15 MS. TATRO: Your Honor, we've already  
16 provided them the TRC and TRC calculations, and  
17 that's the reason we made the decisions we did, and  
18 we await their discovery request.

19 JUDGE JONES: Well, there can be discovery  
20 without prefiled testimony; right?

21 MR. POSTON: Well, not -- not on their  
22 direct case.

23 JUDGE JONES: Okay. Well, I'll tell you  
24 what then. It doesn't -- the reason I'm asking about  
25 prefiled testimony is not whether or not you're going

1 to file the testimony with the other parties. I  
2 think that's some kind of growing trend right now,  
3 but actually file it in the case file, and Staff is  
4 saying that you-all will need to do that?

5 MS. McCLOWRY: Staff would like to prefile  
6 testimony.

7 JUDGE JONES: Okay. So I will -- I  
8 believe the tariff is suspended. Was it six months?

9 MR. POSTON: Until November 5, I think.

10 JUDGE JONES: November? Well, I'll let  
11 you-all work out a procedural schedule and propose  
12 one that gets the case resolved by then, and we'll go  
13 from there.

14 MR. POSTON: Would you entertain extending  
15 that, because that's an awfully tight schedule? You  
16 know, if that means getting the hearing wrapped up by  
17 early October to give the Commission thirty days to  
18 decide, that's pushing things.

19 MS. TATRO: Your Honor, this is Wendy with  
20 Ameren Missouri, and we would object to further  
21 extension. We believe these programs are not cost-  
22 effective and it's not in the best interest of our  
23 customers to continue to spend money on it.

24 We would like to get this matter heard  
25 and resolved at least within the 120 days that's



1 consistent with the Commission's suspension order.

2 JUDGE JONES: Well, I appreciate your  
3 concern, Ms. Tatro, but the public is OPC's concern;  
4 right? If the program --

5 MS. TATRO: If the public to be -- yes,  
6 sir.

7 JUDGE JONES: If the programs are  
8 inefficient and customers suffer for it, then that's  
9 on the Office of Public Counsel. So you don't --  
10 Ameren doesn't have an interest. It doesn't have  
11 something it can lose from this tariff not going into  
12 effect by November.

13 MS. TATRO: Just out of curiosity, are we  
14 still on the record?

15 JUDGE JONES: Yeah, we are.

16 MS. TATRO: Okay.

17 JUDGE JONES: So if you-all can come up  
18 with a procedural schedule that gets it resolved by  
19 November, I'll let you try to do that. If you can't,  
20 then whoever doesn't think it can happen by November,  
21 file a motion to extend it further, and I'll actually  
22 take that to the Commission for a vote. Hopefully we  
23 don't get a 2-2 vote.

24 I don't know where Robert's (ph) going to  
25 be, but we have to do it that way, because it can be

1 extended further, but it doesn't seem like a very  
2 complicated issue, and you-all have been talking  
3 about it for quite some time, and it just sounds like  
4 the issues are whether or not the methodology used by  
5 Ameren to determine efficiency is at issue and  
6 whether or not the stip and agreement has been  
7 adhered to is an issue which, in my opinion, could be  
8 almost a legal conclusion.

9 But if you can get it done by then, I'm  
10 certainly not going to rush you. I'll hopefully be  
11 around for another year, at least.

12 Does anybody have any other questions or  
13 concerns they'd like to bring up before I leave  
14 you-all?

15 MS. TATRO: I would, your Honor.

16 JUDGE JONES: Yes, Ms. Tatro.

17 MS. TATRO: OPC's motion points out the  
18 60-day notice issue, which we did not believe was  
19 applicable but indicated that the Commission did  
20 believe it was applicable. We would request a  
21 waiver.

22 I would hope that the Commission would  
23 consider issuing an order on that issue, because I  
24 would hate to get all the way through a hearing and  
25 then have the Commission say I was supposed to give

1 notice and didn't want to save it and we have to  
2 start the process over. Can we resolve that issue?

3 JUDGE JONES: Okay.

4 MR. POSTON: That makes sense to OPC as  
5 well.

6 JUDGE JONES: All right. Well, I won't  
7 make you-all file anything. I'll just do  
8 something --

9 THE COURT REPORTER: Do something what?  
10 Judge, could I have you repeat that last sentence?

11 JUDGE JONES: I said that I would -- I  
12 won't have anyone file anything extra, not unless --  
13 or Ameren, you did respond to OPC's issue on that  
14 issue, didn't you?

15 MS. TATRO: Yes, we did.

16 JUDGE JONES: Okay. Well, I won't have  
17 you-all file anything additional. I'll just go ahead  
18 and issue something through the Commission without  
19 you-all doing anything.

20 MS. TATRO: Thank you, your Honor.

21 JUDGE JONES: That way you can focus on  
22 what needs to be done right now.

23 Any other concerns?

24 MR. WARREN: Well, Judge, this is Henry  
25 Warren, Staff, again.

1                   I would just state: There's nothing in  
2           the rules regarding natural gas energy efficiency  
3           that states that total resource cost tests will be a  
4           criteria for -- you know, for either programs being  
5           implemented or not implemented.

6                   What they've done is they've ad hoc taken  
7           something from the electric rules and applied it to  
8           the gas.

9                   JUDGE JONES: Okay. Are there measures --  
10          are there methodology in the gas rules that discuss  
11          efficiency and how to determine whether or not an  
12          energy efficiency program is efficient?

13                  MR. WARREN: Yes, in the promotional  
14          practices there are statements. They're not specific  
15          formulas.

16                  JUDGE JONES: It sounds like you disagree,  
17          then, with the TRC method.

18                  MR. WARREN: I -- well, that it can be --  
19          that it can be the sole -- that it is the criteria  
20          that needs to be considered in this case, because it  
21          is not specified in the gas rules.

22                  JUDGE JONES: I mean, have you had  
23          experience with other methods?

24                  MR. WARREN: Yes, I have.

25                  JUDGE JONES: Have you looked at their

1           tariff and applied any of those methods?

2                   MR. WARREN: I have not applied -- have  
3 not applied those methods. As I said before, the  
4 Staff's position is that the -- the stip and  
5 agreement requires that the actual programs  
6 themselves, the data from the programs themselves, be  
7 used. Ameren has -- in their -- in their  
8 calculations have not used data from the programs  
9 themselves.

10               JUDGE JONES: And Ms. Tatro; is that  
11 true?

12               MS. TATRO: I don't believe that's -- I  
13 would agree with that 100 percent, but I think that's  
14 something that my expert has to pipe in on since I  
15 didn't do those calculations, so perhaps we can have  
16 that discussion with Henry later on, but we don't  
17 have evaluated results to use for TRC, that is  
18 correct.

19               JUDGE JONES: Okay. Maybe you-all can  
20 work it out and maybe you won't. In any event, you  
21 know, set out a plan for a procedural schedule  
22 through a hearing to be held sometime in -- if you  
23 give me a week to write a decision, I can write -- or  
24 two weeks -- I'm sorry -- 'cause we have to submit  
25 things for agenda earlier, but it's a day hearing,

1 right, one day?

2 MS. TATRO: I would think it wouldn't  
3 take any longer than that.

4 JUDGE JONES: Okay. So maybe a  
5 hearing sometime in October.

6 Are there any other questions? Any  
7 other concerns?

8 (No response.)

9 JUDGE JONES: With that then, we'll  
10 go off the record, and you-all have a good  
11 afternoon.

12 MS. TATRO: Thank you, your Honor.

13 MR. POSTON: Thank you.

14 MS. McCLOWRY: Thank you.

15 (The hearing concluded.)  
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## 1 CERTIFICATE

2 I, Nancy L. Silva, RPR, a Certified  
3 Court Reporter, CCR No. 890, the officer before  
4 whom the foregoing hearing was taken, do hereby  
5 certify that the witness whose testimony appears  
6 in the foregoing hearing was duly sworn by me;  
7 that the testimony of said witness was taken by  
8 me to the best of my ability and thereafter  
9 reduced to typewriting under my direction; that  
10 I am neither counsel for, related to, nor  
11 employed by any of the parties to the action in  
12 which this hearing was taken, and further, that  
13 I am not a relative or employee of any attorney  
14 or counsel employed by the parties thereto, nor  
15 financially or otherwise interested in the  
16 outcome of the action.

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18 \_\_\_\_\_  
19 Nancy L. Silva, RPR, CCR  
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