

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 3rd day of  
August, 2011.

|   |   |                                     |
|---|---|-------------------------------------|
| In the Matter of Union Electric Company d/b/a | ) |                                     |
| Ameren Missouri's Tariff Filing to Implement  | ) | <b><u>File No. GT-2011-0410</u></b> |
| Changes to the Energy Efficient Natural Gas   | ) | Tariff No. JG-2011-0620             |
| Equipment and Building Shell Measure Rebate   | ) |                                     |
| Program                                       | ) |                                     |

**ORDER DENYING THE OFFICE OF THE PUBLIC COUNSEL'S  
MOTION TO DISMISS**

Issue Date: August 3, 2011

Effective Date: August 3, 2011

**Background**

On June 8, 2011, Union Electric Company d/b/a Ameren Missouri filed proposed tariff sheets intended to eliminate certain measures in the company's energy efficiency program. Ameren's reason for doing so is that in its opinion those measures are not cost-effective.

The Staff of the Commission filed a motion to suspend or reject the tariff. The Missouri Department of Natural Resources and the Office of the Public Counsel also filed similar motions. In addition to the arguments set out by Staff, Public Counsel further noted that Ameren violated the Commission's 60-day notice rule.<sup>1</sup> The rule requires that regulated entities file a notice 60 days prior to filing a case that is likely to be contested.

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<sup>1</sup> 4 CSR 240-4-020.

In its motion, Public Counsel quotes an e-mail that it sent to Ameren expressing its opposition to the changes in the tariff.<sup>2</sup> In its response to the motions filed by the parties, Ameren states that this was a tariff filing and that tariff filings do not necessarily lead to a contested case. Notwithstanding, Ameren acknowledges that it foresaw opposition:

“while the Company understood that there might be opposition to the filing, this does not mean that it was ‘likely’ that a contested case, as that phrase is defined by the rule, would in fact exist.”<sup>3</sup>

Anticipating the applicability of the 60-day-notice rule, Ameren makes the following arguments for the good cause exception under the rule:

- There will be an additional 90 days during which the company will be operating with a tariff which contains measures which are not cost-effective.
- There is no harm in waiving the notice requirement.
- There has been no demonstration that the Commission has somehow been deprived of the ability to properly process or evaluate this filing, nor that the parties have suffered any prejudice.

## **Discussion**

The Commission recognizes that tariff filings do not necessarily lead to contested cases. Ameren, however, acknowledges that it foresaw possible opposition to its tariff filing yet attempts to draw a distinction between what “might be” and what is “likely” to occur. The Commission appreciates that what might happen is not necessarily likely to happen. However, this distinction fades in light of Ameren’s anticipation of possible opposition to its tariff coupled with Public Counsel’s e-mail clearly stating that it opposed the tariff changes. Ameren could foresee that its tariff filing would draw opposition. The Commission therefore concludes that the notice requirement is applicable.

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<sup>2</sup> Pages 2-3, The Office of the Public Counsel’s Motion to Reject Tariff Filing and Response in Support of the Staff’s Motion to Reject or Suspend.

<sup>3</sup> Page 14, Response of Ameren Missouri.

Given this conclusion, Ameren requests that the Commission find good cause to waive the notice requirement. Ameren's first point, that the tariff contains measures which are not cost-effective, has been unilaterally determined by Ameren. Whether this is true remains to be seen. Ameren's second point is that there is no harm in waiving the rule. The Commission agrees. However, the Commission will not waive the rule because there is no harm in doing so. Rather, as discussed below, the Commission will waive the rule, in part, because there may be harm in enforcing it.

Finally, Ameren states that there has been no demonstration that the Commission has somehow been deprived of the ability to properly process or evaluate this filing, nor that the parties have suffered any prejudice. This is not true. Proper processing of this case would have included a 60-day notice filed by Ameren. With regard to parties being prejudiced, the purpose of the rule is not to serve parties but to serve the Commission. Hence, whether there is an absence of prejudice to the parties is not at issue.

As noted, the purpose of the rule is not to serve the parties but to serve the Commission; to put Commissioners on notice of contested issues so that they might avoid improper communications. For the Commission to enforce the rule at this stage in this proceeding would not serve that purpose. In fact, requiring Ameren to refile would waste the staff resources that have already been devoted to this tariff filing. Further, if Ameren's assertions are proved to be correct, the filing would eliminate wasted customer resources on a non-cost-effective program. It is in the public interest to determine if the measures should be eliminated or continued in a timely manner.

In light of this, the Commission will not enforce its rule in vain but would rather the rule have practical effects when properly applied. Because the purpose of the rule will not be served, the Commission finds that there is good cause to waive the rule.

## **Decision**

Ameren could foresee opposition to its proposed tariff; thereby, creating a contested case. The Commission's rule requiring that a 60-day notice be filed applies. However, the Commission finds that there is good cause to waive the rule.

### **THE COMMISSION ORDERS THAT:**

1. The Office of the Public Counsel's motion to dismiss this case is denied.
2. This order shall become effective upon issuance.

### **BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

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

Jones, Senior Regulatory Law Judge