

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Union Electric)
Company's (d/b/a Ameren Missouri))
Gas Service Tariffs Removing Certain)
Provisions for Rebates from Their) Case No. GT-2011-0410
Missouri Energy Efficient Natural Gas)
Equipment and Building Shell)
Measure Rebate Program.)

STAFF'S BRIEF

COMES NOW the Staff of the Missouri Public Service Commission and for its
Brief states:

INTRODUCTION

This case is about an agreed upon Unanimous Stipulation and Agreement¹ signed on January 24, 2011, that Ameren seeks to nullify within four months of signing the Stipulation.² This case is before the Commission on a Motion to Reject or Suspend Union Electric d/b/a Ameren Missouri's ("Ameren") tariff filing.³ Ameren proposes to eliminate most of the building measures and appliance rebates currently available to its natural gas customers. The elimination of these measures and rebates will essentially end Ameren's energy efficiency rebate program.⁴ It is not in the public interest for the Commission to permit Ameren to eliminate the majority of its energy efficiency rebates.⁵ The Unanimous Stipulation and Agreement (Stipulation) in GR-2010-0363⁶ provides for

¹ Staff 6.

² Staff 8.

³ Staff's June 27, 2011 Motion to Reject or Suspend Tariff Filing in Case No. GT-2011-0410. EFIS No. 1.

⁴ Staff 8 (Ameren's proposed tariff).

⁵ *Gulf Transport Co. v. Public Service Com'n*, 658 S.W.2d 448, 456 (Mo.App. 1983)(the P.S.C. must have as its principal goal, the vindication of the public interest)

⁶ Staff 6.

uninterrupted availability of the measures in Attachment C to the Stipulation⁷ through December 31, 2012.⁸

In support of its proposal to eliminate building shell measures and appliances offered to customers in its current tariff,⁹ Ameren offers an energy efficiency evaluation of measures in the program, which is unreliable and untimely.¹⁰ The Stipulation provides for a post implementation evaluation, performed by a third party using participant information.¹¹ Ameren's evaluation was done prematurely and within two months of signing the Stipulation and Agreement, which stipulated the time in which the evaluation was to take place.¹²

The Stipulation also provides: "Ameren may file with the Commission proposed tariff sheets" concerning energy efficiency programs "if Ameren believes circumstances warrant change."¹³ Ameren suggests that the Stipulation itself is a change in circumstances that warrants the elimination of the measures in the program. Ameren's attempt to destroy the terms of the Stipulation must be rejected.¹⁴

Ameren's Total Resource Cost (TRC) evaluation is not a "circumstance" as the term "circumstance" was intended by the parties to the Stipulation.¹⁵ Commission approval of Ameren Missouri's proposal to use an unreliable energy efficiency evaluation to virtually eliminate its energy efficiency programs is not in the public

⁷ Staff 6, Stipulation p.5.

⁸ Staff 6, p. 5, para G.

⁹ Staff 6, Appx. C.

¹⁰ In his Direct Testimony Mr. Shoff described his TRC as an evaluation. On the witness stand he amended his testimony to use the term "analysis. Tr. 156:1-25."

¹¹ Staff 6, p. 3, 6.C.

¹² *Id.*

¹³ *Id.*

¹⁴ Tr. 84: 15-19.

¹⁵ Staff 6, p. 5, G.

interest. Approval of Ameren's proposed tariff would: (1) eliminate its customer's most requested and most popular rebates;¹⁶ (2) eliminate 70% of its rebate incentive measures and (3) allow Ameren to retain a significant amount of the \$700,000 received from customers which the Commission required Ameren to use for "annual funding for energy efficiency programs."¹⁷

The overwhelming weight of the evidence proves there are no circumstances which warrant Ameren's elimination of most of its energy efficiency program set out in its Commission approved tariffs.¹⁸ Ameren's plans to eliminate the measures contained in its energy efficiency program tariffs¹⁹ must be rejected.

I. Ameren's tariff filing conflicts with the agreements in the Unanimous Stipulation and Agreement in GR-2010-0363.

The parties agreed to and filed the Stipulation to resolve all issues in the rate case and in GT-2010-130.²⁰ The parties agreed to the Stipulation as a whole, which includes the measures to be implemented. The fact that Ameren would provide, the uninterrupted availability of the energy efficiency program, as well as the amount of money Ameren would collect from its customers to pay for rebates were stipulated provisions.²¹ Ameren settled its rate case, and began collecting customer money to pay for energy efficiency rebates. Within two months of signing the Stipulation, Ameren made attempts to reduce the amount of rebates it would pay customers.²²

¹⁶ Staff 4 (showing the measures having the highest.

¹⁷ Staff 15.

¹⁸ Staff 6, Appendix C.

¹⁹ Staff 8.

²⁰ Staff 6, p. 1, para. 2.

²¹ *Id.*

²² Staff 3, Ameren Tariff Sheet No. 78, AVAILABILITY (Rebates for measures listed under the residential and commercial energy and non-energy audit improvement programs are not available to a participant when incentive payments are available for the same of similar measures at that premise from a utility other than Company.)

The intent of the parties when they signed the Stipulation and Agreement that Ameren would offer certain measures to its customers is evidenced by Appendix C, which is attached to the Stipulation as specimen tariffs that were required to be filed with the Commission.²³ Appendix C,²⁴ clearly identifies the Equipment and Building Shell Measures Ameren was to offer to its customers. Mr. Lovett testified that the Parties all agreed to the terms in Appendix. C, “which was the program” according to Mr. Lovett. It should be noted Mr. Lovett’s testimony used the word “was” not “is” when referring the program. Ameren’s proposed changes to the tariff is contrary to the terms of the Stipulation,²⁵ in GR-2011-0363 and the Commission’s Order approving the Stipulation.²⁶

It is astounding that Ameren asserts the *Stipulation* itself can constitute a change in circumstances warranting removal of many measures in Ameren’s tariff. Dr. Warren testifies that all Parties to the Stipulation agreed these measures should be included in Ameren’s energy efficiency program:

The energy efficiency measures that Ameren Missouri is now asserting are not cost-effective were among the energy efficiency programs included in the exemplar or specimen tariff listed in Appendix C of the Unanimous Stipulation and Agreement (Stipulation) in Case No. GR-2010-0363, which was Ameren Missouri Gas’s most recent rate case and the rate case subsequent to Case No. GR-2007-0003. The parties to this case are all members of the collaborative to which Mr. Buchanan referred and all parties to the Stipulation agreed on the measures to be included as part of the Stipulation Appendix C. These exemplar tariff sheets were filed by Ameren Missouri as part of the Stipulation and approved by the Commission in its Order Jan 19, 2011 Order Approving Stipulation and Agreement.

²³ Staff 6.

²⁴ *Id.* Appx. C.

²⁵ Staff. 6.

²⁶ Staff 15.

Dr. Warren also testifies: “In the most recent rate case, where the same parties agreed that the programs containing the same measures should continue to be offered to Ameren Missouri’s customers, Ameren Missouri did not raise any issue regarding the *ex-ante* (pre implementation) cost effectiveness of the measures.”²⁷

a. Was there a change of circumstance, as that phrase was used in the Stipulation in Para 6 G? If so does the change warrant the removal of thirteen (13) residential and seven (7) general service measures from the energy efficiency program?

The evidence demonstrates there was no change in circumstances. The Stipulation states that Ameren may make changes to its energy efficiency tariffs if it believes circumstances warrant changes.²⁸ Remarkably, Ameren now claims that signing the Stipulation was the change in circumstances²⁹ that allows it to propose elimination of more than 60% of its rebate incentive measures.³⁰ Ameren argues the agreement permits - even requires it - to unilaterally take steps to eliminate the programs it agreed to offer,³¹ including measures most popular with its customers.³²

The Stipulation allows Ameren to file to revise its tariff sheets if “Ameren Missouri believes circumstances warrant changes.” The intent of the parties when they signed the Stipulation was not to permit Ameren to eliminate measures, when to do so would be incompatible with the Stipulation’s purpose.

Ameren attempts to distinguish between the terms “measure” and “program.”³³ There has been no consistent definition of “program.” It is Staff’s position Ameren’s

²⁷ Exh. Staff 2, Warren Surrebuttal 2:13-22.

²⁸ Staff 6. p. 5 para. G.

²⁹ Ameren 1, Lovett Direct, page 2; Tr. 84:15-20 “That’s the reason we are here . . .”

³⁰ Tr. 106:5-108.

³¹ Tr. 108:1-12.

³² Staff 4.

³³ Ameren 2, 9:11-22.

programs consist of the measures listed in the specimen tariff sheets attached to the Stipulation. The tariff sheets were attached to the Stipulation at Appendix C so there would be no question as to what programs and measures were to be available to customers. Mr. Lovett's testimony that, "as long as one measure is available to one customer, Ameren's programs are available,"³⁴ is disingenuous. That was not the intent of the other Parties.

It is important to note that Case No. GT-2011-0130 was merged into the rate case which resulted in the Stipulation at issue in this case. In GT-2011-0130, the Office of the Public Counsel (OPC) filed a motion in opposition to Ameren Missouri's suspension of its energy efficiency rebate programs. The Stipulation's provision requiring continuity of Ameren's energy efficiency programs (as listed in Appendix C) through December 31, 2012, was one of Staff's reasons for signing the Stipulation.

b. The TRC evaluation performed by Ameren Missouri was not done at an appropriate time pursuant to the Stipulation and Agreement in this case.

The Stipulation requires a post-implementation evaluation, which must contain customer usage data through April 2012, to be completed in December 2012.³⁵ Because Ameren's TRC evaluation was not completed at the time or with the information specified by the Stipulation, Ameren's premature and deficient TRC evaluation should be ruled untimely and improper.

c. Does the proposed removal of these measures conflict with the terms of the Stipulation and Agreement that requires "uninterrupted availability of these energy efficiency programs through December 31, 2012," as required by ¶ 6G of the Stipulation and Agreement?

³⁴ Tr. 106:20-107:2.

³⁵ Staff 6.

In signing the Stipulation, Staff intended that all measures listed in the specimen tariff sheets submitted with the Stipulation would be available to customers through December 2012. The reason the specimen tariff sheets³⁶ described the program in detail was to assure continued availability of these programs to customers.

The Stipulation discusses increasing the energy efficiency program for the “natural gas energy efficiency programs.”³⁷ It is Staff’s position that it was the intent of the parties signing the Stipulation, which provided for increases in funding for Ameren’s programs to \$850,000 over the next three years,³⁸ was to allow changes to the tariff sheets so that Ameren Missouri could ramp up its energy efficiency program(s).³⁹

e. How should “cost-effectiveness” as used in ¶6B of the Stipulation and Agreement be interpreted?

For natural gas utilities, “cost effectiveness” should be defined using the Commission’s rules at 4 CSR 240-14.010.⁴⁰ The Commission’s definition of “cost effectiveness” in Chapter 22 applies to Missouri regulated electric utility companies.⁴¹ The definition in Chapter 14 is reflective of a Utility Cost Test,⁴² also known as the Program Administrator Cost Test.⁴³

³⁶ Staff 6, Appx. C.

³⁷ Staff 15, Order Approving Stipulation and Agreement.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Staff 10.

⁴¹ *Id.*

⁴² Tr. 276:

⁴³ Tr. 284: 1-25.

Ameren asserts the Commission's definition of "cost effectiveness" in Chapter 14 conflicts with another provision in the same rule. Even assuming there is a conflict within the rule,⁴⁴ that does not permit Ameren to unilaterally choose to use a different method for determining "cost effectiveness." On cross examination, Mr. Stahlman testified the Commission's rule "[I]s reflective of the utility cost test, (UCT)] although no test is specifically mentioned."⁴⁵ Mr. Stahlman further testifies the UTC takes into account the costs and benefits to the provider (Ameren) of the energy service⁴⁶ "and it also calculates the benefit to both the utility and its customers."⁴⁷ That is what is required by the Commission's definition in Chapter 14. Mr. Stahlman also testifies that the TRC does not "best calculate[s] . . . a result that satisfies the requirements in 4 CSR 240-14.30 sub 1".⁴⁸

i. Should the TRC be the method used to determine cost-effectiveness under this Stipulation and Agreement?

The TRC should not be the method used to determine cost effectiveness. Any evaluation of the "cost-effectiveness" of energy efficiency measures should be determined in accordance with the definition of cost effectiveness in the Commission's rules at 4 CSR 240-14.01. As noted above the Commission's rule is closest to the Utility Cost Test.

Dr. Warren testified that the "cost effective clause in that [Stipulation] refers to the post implementation evaluation. I think its very clear. It directly – the paragraph directly

⁴⁴ Staff 10.

⁴⁵ Tr. 277:3-5.

⁴⁶ Tr. 275:9-19.

⁴⁷ Tr. 283:18-22.

⁴⁸ Tr. 283:2-6.

following cost effective refers to post implementation.⁴⁹ [P]aragraph 6C [in the Stipulation] says cost effective programs. The very next sentence talks about a post implementation evaluation of the effectiveness. The [term] effectiveness in 6C refers to the cost effectiveness in 6B.⁵⁰ Dr. Warren further testifies that “[t]he stip and agreement, I don’t believe, makes a . . . reference to pre-implementation analysis.”⁵¹ In that regard, the Stipulation does not address a pre-implementation evaluation, but does require a post implementation evaluation.⁵²

Ameren’s TRC is statistically unreliable⁵³ and should not be relied on by the Commission as a reasonable or effective method to determine the cost-effectiveness of Ameren’s energy efficiency measures or programs. Mr. Shoff fails to provide references in support of his use of the TRC. Mr. Shoff references a 2008 NAPEE study to support his TRC results, however, the 2008 NAPEE study does not support his use of the TRC as the primary test.⁵⁴

Detailed review of the NAPEE study, shows the study actually contradicts Mr. Shoff’s testimony. For example, Table 2-2, Exh. Staff 11 describes “The **Five Principal Cost Effectiveness Tests Used in Energy Efficiency.**” Table 3.1 summarizes the benefits and costs included in each test. In this table, “TRC” it is described as “Benefits” and costs from the perspective of all utility customers (participants and non-participants) in the utility service territory.” Under the TRC benefits section the chart indicates that benefits **are to include additional resource savings.**⁵⁵ Mr. Shoff, however, only

⁴⁹ Tr. 292:14-17.

⁵⁰ Tr. 292:12-23.

⁵¹ Tr. 296:11-12.

⁵² Staff 6.

⁵³ Tr. 166:12-14.

⁵⁴ Staff Exh. NAPEE guide Tables 5-1 and 5-3.

⁵⁵ Staff 1, Appx. B Chart 5-1 (emphasis added).

analyzed gas benefits,⁵⁶ and he did not make his analysis specific to Ameren Missouri's gas service territory.⁵⁷ He did not include electric benefits, despite admitting the TRC is to include additional resource savings as required by the NAPEE chart he references in his testimony.⁵⁸ Mr. Shoff admits in his testimony that there will be additional resource savings for Ameren's electric operations, if gas customers install energy efficiency measures. He did not, however, include these additional savings among benefits in his analysis.⁵⁹

During the hearing Mr. Shoff admits the Chart 5.1 showed that five (5) states use TRC as the Primary Cost-Effectiveness Test Used by Different States.⁶⁰ At hearing Mr. Shoff pointed to another chart [5.2]⁶¹ in the NAPEE guide as supporting his testimony that the TRC is the "most common primary measure of energy efficiency cost effectiveness in the nation."⁶² The error with his reliance on that Chart 5.2 is it shows the number of states using the TRC as the primary or *secondary* method, not just the primary method.

Mr. Shoff admits the higher cost measures were "cut out."⁶³ If the measure is more costly, the benefits must also be greater to get a TRC result of one (1). It is also more difficult to get a TRC of one(1) if the evaluator ignores the fact that in a substantial portion of Ameren's territory, it provides both gas and electric service. Mr. Shoff did not include any electric benefits in his analysis,⁶⁴ nor did he account for the fact that

⁵⁶ Tr. 186:2-22.

⁵⁷ Tr. 226: 24-25.

⁵⁸ Ameren 3, 6:11-17. Tr. 96:1-12.

⁵⁹ Tr. 167; 14-23.

⁶⁰ Exh. Staff 13.

⁶¹ Exh. Staff 1, Stahlman Rebuttal, Appx. B, 5-2.

⁶² Ameren 3, Shoff Direct, 6:11-17.

⁶³ Tr. 214:15-25.

⁶⁴ Tr. 186:14-22.

customers must get a home energy audit before getting a rebate for building shell measures. Mr. Shoff also admits in his testimony that customers are unlikely to get a home energy audit⁶⁵ to get a rebate for the measures Ameren proposes to leave in its residential program. Mr. Shoff identified a commercial measure that passes the TRC but notably, as of August 3, Ameren had only one general service customer take advantage of the rebate program.⁶⁶

Staff believes it is unreasonable and not cost-effective for any company to continually perform ad hoc evaluations on energy efficiency programs, which is the reason the parties agreed to an ex post evaluation, using information from a 13-month period.⁶⁷

ii. Was Ameren Missouri's implementation of the TRC proper?

No, Ameren performed the wrong test, at the wrong time, with the wrong inputs and wrong assumptions. Ameren cannot ignore the test for cost effectiveness, which is required by the Commission's rules. Ameren's use of the wrong test at the wrong time not only fails to conform to the Promotional Practices Rules,⁶⁸ it does not conform to the Unanimous Stipulation.⁶⁹ The Stipulation requires a post-implementation evaluation which is to be based on program specific information gathered through April 2012.⁷⁰

Ameren's mixing the terms "analysis" and "evaluation" is not helpful to its efforts to change its energy efficiency program. Staff asserts Ameren is mixing the terms in an

⁶⁵ Tr. 229; 2-10.

⁶⁶ Exh Staff 4.

⁶⁷ Stipulation para E

⁶⁸ Staff 6.

⁶⁹ Staff 6.

⁷⁰ Staff 6.

attempt to avoid the fact the Stipulation governs the type, timing and purpose of the evaluation to be done of Ameren's natural gas energy efficiency program.⁷¹

Based on their statistically unreliable TRC, Ameren proposes to eliminate its most popular programs.⁷² Mr. Lovett testified that the program would still offer the "bread and butter" hot water heater.⁷³ Paying for one "bread and butter" appliance does not negate the fact that more energy efficient hot water heaters are much more popular with customers.⁷⁴

iii. Is the relevant cost effectiveness test defined in Commission Rule 4 CSR 240-14.010(6)(D)?

Yes. It is the definition in the Commission's rules, which applies to gas utility companies. This case is about the correct or relevant definition of "cost effectiveness." Chapter 14 rule applies to Missouri regulated natural gas utility companies. Just because Ameren believes the definition should be the same for gas and electric utility companies, does not make it an accurate assertion nor does it mean Ameren can ignore the Commission's rules.⁷⁵

At the end of the day what this case is really about is an agreed upon Unanimous Stipulation and agreement signed on January 24, 2011 that Ameren seeks to nullify within four months of signing the Stipulation.

Does the proposed removal of these measures conflict with the terms of the Stipulation and Agreement that requires "uninterrupted availability of these energy efficiency programs through December 31, 2012," as required by ¶ 6G of the Stipulation and Agreement?

⁷¹ Staff 6. 6.C.

⁷² Exh. Staff 4.

⁷³ Tr. 122.

⁷⁴ Staff 4.

⁷⁵ Staff 10.

All parties to the Stipulation, including Ameren at the time they signed the Stipulation agreed that measures listed in C, to the Stipulation, would be included in the programs available to Ameren natural gas customers through December 2012.

d. Did Ameren Missouri comply with Paragraph 6G of the Stipulation and Agreement to circulate proposed tariff sheets for review and comment by the EEAG prior to filing the proposed changes with the Commission?

No. Ameren did not circulate the tariff sheets to the Energy Efficiency Advisory Group (EEAG) prior to filing them with the Commission. It is a requirement of the Stipulation to circulate proposed tariffs to the EEAG. Ameren removed ceiling insulation from the general service building measures section. The ceiling insulation passed the TRC when Ameren discussed its tariff with the advisory group.⁷⁶

IV. Should the Commission take factors other than measure level cost effectiveness tests into account when determining what measures should be included in programs like the home energy audit program included in Ameren Missouri's tariffs?

The Commission should consider the program in its entirety. The Commission should consider that customers must pay for a home energy audit before they can apply for a rebate. The Commission should also consider that a TRC is a moving target, which can fluctuate substantially in a short period of time. Ameren's TRC analysis should not be the sole *basis* and the only rationale to allow Ameren to change its energy efficiency program. As required and agreed upon by the Stipulation and Agreement a thorough unbiased evaluation is done at the end of the time period specified in the agreement.

⁷⁶ Exh. Staff 4. (spreadsheet attached by Ameren to an April 11 email to the EEAGF shows General Service ceiling insulation with a TRC of 1.56. Sometime before its June 8 tariff filing, General Service ceiling insulation dropped to .82 and ceiling insulation was removed from the tariffs filed with the Commission. (Ameren 3, Shoff Direct, chart at 4:1).

V. Is this new tariff in the public interest?

No. Ameren's proposal to alter its energy efficiency tariff is not in the public interest.

Ameren is proposing to gut its program because they say it is not cost effective. However, they have not produced, nor suggested any replacement measures. Even when pressed at the hearing, Ameren was not able to firmly commit to any replacement measures.⁷⁷ The fact that Ameren is considering leaving in shower heads and faucet aerators provides little or no incentive for a customer to pay in advance for a home energy audit.⁷⁸ The Commission ordered Ameren to increase its spending on energy efficiency. To date Ameren has increased its energy efficiency spending.

Based on the overwhelming evidence in this case, Ameren's proposal should be rejected as not in the public interest. Any reasonable person would find, as Staff believes, removal of 60-70% of the measures essentially eliminates programs that customers are paying for and that were agreed upon in a Unanimous Stipulation. If Ameren is allowed to remove 60-70% of the measures of the program, what would remain would be the same as an egg shell with no yolk or white. It might look like an egg, but it is of no value and has no substance.

⁷⁷ Tr. 75:24 – 76.3.

⁷⁸ Tr. 229:6-15.

WHEREFORE, Staff requests the Commission: issue its Order denying Ameren's new tariff filing, order Ameren to comply with the provisions of the Stipulation and attached tariffs and leave all measures in the tariffs all parties agreed upon in Case No. GR-2010-0363.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 20th day of October, 2011.

/s/ Lera L. Shemwell