

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

In the Matter of Union Electric Company)	
d/b/a Ameren Missouri's Tariff Filing to)	
Implement Changes to the Energy)	Case No. GT-2011-0130, et al.
Efficient Natural Gas Equipment and)	
Building Shell Measure Rebate Program)	

**MOTION FOR RECONSIDERATION and
MOTION FOR EXPEDITED CONSIDERATION**

COMES NOW the Missouri Office of the Public Counsel ("OPC") and for its Motion for Reconsideration of the Commission's Order Granting Request to Postpone Evidentiary Hearing, states as follows:

1. These consolidated cases were initiated on November 2, 2010 when OPC filed two separate motions. The first motion was Public Counsel's Motion to Resolve Issues Regarding UE's Energy Efficiency Programs and Motion for Expedited Consideration filed in Case No. GO-2011-0131.¹ OPC requested that the Commission resolve differences among the energy efficiency collaborative members regarding Union Electric Company, d/b/a Ameren Missouri's (UE) unilateral decision to cease offering rebates during and immediately following a UE marketing campaign designed to encourage consumers to participate in the rebate program. OPC requested expedited consideration of this motion since UE is currently *rejecting* applications for rebates.

¹ This case was first docketed as Case No. GO-2011-0124. However, when OPC made the subsequent filing to suspend Tariff Filing No. JG-2011-0211, OPC support staff incorrectly filed the motion in GO-2011-0124. The Commission's Data Center corrected the mistake by separating the filings into two separate cases, Case Nos. GT-2011-0130 and GO-2011-0131.

2. The second motion was OPC's Motion to Suspend Tariff Filing filed in Case No. GT-2011-0130. UE's tariff filing would amend its tariff to reallocate additional funds from the commercial customer rebate program to the residential customer rebate program. OPC did not request expedited consideration of its request to suspend UE's tariff filing.

3. OPC did not request consolidation of these separate but related cases, primarily because OPC did not believe there was a need to expedite the tariff filing case, GT-2011-0130. However, by order of delegation, the Commission consolidated Case Nos. GT-2011-0130 and GO-2011-0131 in its November 2, 2011 Order Consolidating Cases, Directing Notice, Setting Intervention Deadline, and Directing Filing. This same order also directed UE to respond to OPC's motions no later than November 5, 2010.

4. On November 3, 2010, UE filed a request to extend its time to respond from November 5, 2010 to November 9, 2010. OPC did not object to giving UE additional time to respond. The Commission granted UE's request on November 4, 2010.

5. On November 9, 2010, UE filed its Response to OPC's motions and requested that the Commission deny OPC's motions.

6. On November 10, 2010, the Commission issued its Order Suspending Tariff and Setting Hearing, which set these consolidated cases for hearing on November 29, 2010, following OPC's request to hear this matter in November so that any additional funds made available in November 2010 would allow residential customers to immediately start submitting rebate applications again in November and December 2010.

7. On November 12, 2010, OPC filed its Motion to Establish Expedited Discovery Responses and Motion for Expedited Consideration. The Commission granted this motion by order of delegation on November 12, 2010.

8. On November 19, 2010, OPC notified the regulatory law judge that a discovery dispute had arisen between OPC and UE. OPC requested a discovery conference pursuant to 4 CSR 240-2.090(8), and the parties eventually agreed to hold an 11:00 a.m. discovery conference on November 23, 2010.

9. At 9:27 a.m. on November 23, 2010, UE filed its Motion to Postpone Evidentiary Hearing. UE did not request expedited consideration of its motion. UE's two-page motion states that the Collaborative "will meet next week to discuss this tariff," however, at the time no such meeting had been scheduled. UE's motion also states that the parties to UE's rate case will meet in settlement discussions on November 30, 2010, and that "if the parties to the rate case can come to an agreement regarding these issues, there will be no need for the Commission to hold an evidentiary hearing." OPC disagrees completely with UE's assertions that the rate case settlement discussions could result in a resolution of the issues raised in GO-2011-0131, and relayed this position to the regulatory law judge as explained below.

10. Following UE's request to postpone the hearing, the regulatory law judge sent an e-mail at 9:48 a.m. on November 23, 2010 to counsel for UE and OPC, and asked if OPC was "still wishing to go forward with the discovery conference in light of Ameren withdrawing the tariff in GT-2011-0130." OPC replied at 10:13 a.m. by stating, "Yes, I would like to go forward with the discovery conference in GT-2011-0130. There is still the unresolved issue in the EE program case about UE turning away rebate applicants."

UE's claim that they are withdrawing the tariff filing (which to the best of OPC's knowledge has not been withdrawn as of the date of this filing), has no bearing on the issue which prompted the scheduling of the expedited hearing – that is, the issue of UE ceasing to accept new rebate applications from residential customers.

11. At 10:36 a.m. on November 23, 2010, the regulatory law judge sent another e-mail to OPC and asked “What is Public Counsel’s position on the need for a hearing next week? Keeping in mind that Public Counsel’s motion for an expedited hearing was premised on the need to act regarding the tariff – the tariff that no longer exists.” Counsel for OPC sent a reply e-mail at 10:47 a.m., which stated “The issue of UE suspending the rebate program is still unresolved. It is my understanding that UE will continue to deny rebates to new applicants until 2011. It is my position that we need to go forward with the hearing, and I intend to file a reply to UE's motion.”

12. At 10:50 a.m., the regulatory law judge sent an e-mail to the parties that stated “The Commission will take up the need of holding an expedited hearing or postponing it at today’s Agenda.” The Commission’s Agenda listed Case No. GT-2011-0130 under “Case Discussion,” but did not contemplate UE’s motion since the motion was filed just two and a half hours before the scheduled Agenda meeting.

13. At 11:00 a.m. on November 23, 2010, the parties participated in a discovery conference, wherein OPC and UE argued as to the relevancy of several data requests from OPC to UE in this case. During the call, the regulatory law judge once again asked the parties if the evidentiary hearing was necessary in light of UE’s request to postpone it. Counsel for OPC explained again to the regulatory law judge that UE’s withdrawal of the tariff (Case No. GT-2011-0130) had no bearing on the issues raised in

Case No. GO-2011-0131, and again stated that OPC *opposed* UE's request to postpone the hearing. OPC further advised the law judge that as a result of a conversation held the prior day between Mr. Ryan Kind of OPC, and Mr. Gregg Lovett of UE, that the parties were at an impasse over the issue of resuming acceptance of rebate applications for residential customers during 2010, that the rate case and collaborative discussions could not resolve the issues, and that the evidentiary hearing was necessary.

14. Due to the timing of UE's request to postpone the hearing, which was filed only a few hours before the Agenda session, OPC was unable to file a response opposing UE's request before the Commission's Agenda meeting. OPC was, however, hopeful that the regulatory law judge would relay to the Commission that OPC was opposed to postponing the hearing. Surprisingly, OPC's position on postponing the evidentiary hearing was never relayed to the Commission by the regulatory law judge during the 12:00 p.m. Agenda meeting. The regulatory law judge also chose not to explain OPC's position that the parties were at an impasse, and that the collaborative and rate case discussions could not resolve the issue of UE rejecting rebate applications.

15. On November 23, 2010, the Commission, by order of delegation, granted UE's request to postpone the evidentiary hearing. The Commission's Order states that the Collaborative "may be able to resolve any issues concerning revising the tariff to use these funds for customer rebates." The order says *nothing* about the issues raised in Case No. GO-2011-0131 regarding UE's suspension of the residential rebate program while it was also aggressively marketing the same program.

16. Every day that the Commission fails to schedule an evidentiary hearing in this matter could result in one more day of UE residential customers being denied the rebates that they were promised by UE through its marketing campaign.

17. The Commission stated in past cases that it is committed to promoting and expanding gas energy efficiency programs. However, postponing the evidentiary hearing is in direct contradiction to that goal since it could act to deny rebates through the end of 2010. Simply put, the Commission's Order Granting Request to Postpone Evidentiary Hearing, coupled with UE's unilateral decision to cease offering rebates, will result in an outcome that is directly contrary to the Commission's stated goals of promoting energy efficiency, and will ultimately harm ratepayers.

18. OPC asks that the Commission reconsider its Order Granting Request to Postpone Evidentiary Hearing, and that the Commission set this matter for hearing as soon as possible, but no later than December 6, 2010. If the Commission delays this matter until December 30, 2010 as stated in the Order, the issue of resuming 2010 residential rebate applications and making rebate payments for valid applications will become moot, and the confusion and harm caused by UE's misleading marketing campaign will continue to grow.

19. Pursuant to 4 CSR 240-2.080(16), OPC requests expedited consideration of this motion for the same reasons it originally requested, and was granted, expedited consideration, and asks that the Commission act on the Motion for Reconsideration no later than December 1, 2010. A quick resolution of this case could result in rebate funds being available again to residential ratepayers in 2010. Further delays in resolving this matter will result in the continued denial of energy efficiency rebates for consumers

during the winter heating season. It will also further any harm caused by the misleading marketing campaign that could cause consumers to make investments in energy efficiency under the false assumption that UE will provide that customer with a rebate. OPC is aware of at least one HVAC company that already had to renege on over forty-four ratepayers rebate applications. OPC filed this motion for expedited consideration as soon it could have.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission: 1) Grant OPC's request for expedited consideration, 2) Reconsider its Order Granting Request to Postpone Evidentiary Hearing, and 3) Set this matter for hearing as soon as possible, preferably no later than December 6, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 29th day of November 2010:

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