

**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 Efficient Natural Gas )  
Equipment and Building Shell Measure Rebate )  
Program )

**File No. GT-2011-0410**  
Tariff No. JG-2011-0620

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**REPORT AND ORDER**

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**Issue Date:** November 2, 2011

**Effective Date:** November 12, 2011

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

## Appearances

Wendy Tatro for **Union Electric Company d/b/a Ameren Missouri**, 1901 Chouteau Avenue, St. Louis, Missouri 63103

Sarah Mangelsdorf for **the Missouri Department of Natural Resources**, Post Office Box 899, Jefferson City, Missouri 65102

Marc Poston for **the Office of the Public Counsel and the Public**, Post Office Box 2230, Jefferson City, Missouri 65102

Lera Shemwell and Meghan McClowry for **the Staff of the Missouri Public Service Commission**, 200 Madison Street, Post Office Box 309, Jefferson City, Missouri 65102

**JUDGE:** Kennard Jones, Senior Regulatory Law Judge

## REPORT AND ORDER

**Syllabus:** In this order, the Commission rejects Ameren Missouri's proposed tariff sheets as being contrary to the Stipulation and Agreement and not in the public interest.

### Summary

On January 19, 2011, the Missouri Public Service Commission approved a Stipulation and Agreement entered into between Union Electric Company d/b/a Ameren Missouri, the Staff of the Missouri Public Service Commission, the Office of the Public Counsel and the Missouri Department of Natural Resources.<sup>1</sup> Part of that Agreement requires Ameren to maintain an Energy Efficiency Program.<sup>2</sup> In compliance with the

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<sup>1</sup> File No. GR-2010-0363, Order Approving Stipulation and Agreement, issued January 19, 2011.

<sup>2</sup> Staff Exhibit 6, Unanimous Stipulation and Agreement, paragraph 6.

Agreement, Ameren filed tariff sheets on January 21, 2011, which the Commission approved to become effective on February 20, 2011.

On June 8, 2011, Ameren filed tariff sheets with proposed changes to the Energy Efficiency Program. The parties to the Agreement objected to Ameren's proposed changes and moved the Commission to reject the tariff sheets. To consider the arguments, the Commission suspended the tariff until November 5 and held an evidentiary hearing on October 5. The parties submitted post-hearing briefs on October 20 and, to properly consider the case as submitted, the Commission suspended the proposed tariff sheets for an additional 30 days.

Of the number of questions presented by the parties in the List of Issues, the Commission finds that resolution of only two specific questions is necessary to resolve this matter: (1) whether approving Ameren's proposed tariff would be contrary to the Agreement; and (2) whether Ameren's proposed tariff revisions are in the public interest. Through the following Findings and Conclusion, the Commission determines that approving Ameren's proposed tariff would be contrary to the Stipulation and Agreement because the parties have agreed to leave the Agreement in place through December 2012. Further, for a number of reasons set out below, the Commission determines that approval of the proposed tariff sheets would not serve the public interest.

### **Findings of Fact.**

1. Ameren, Staff, OPC and MDNR entered into a Stipulation and Agreement, which the Commission approved on January 19, 2011.<sup>3</sup>

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<sup>3</sup> Staff Ex. 15; Order Approving Stipulation and Agreement, Comm. File No. GR-2010-0363 issued January 29, 2011.

2. As part of the Agreement, Ameren is required to maintain an Energy Efficiency Program.<sup>4</sup>
3. Attached to the Agreement are the tariff sheets the parties intended Ameren to file.<sup>5</sup>
4. In compliance with the Agreement, Ameren filed tariff sheets which the Commission approved to be effective on February 20.<sup>6</sup>
5. On March 10, 18 days after the effective date of the tariff, Ameren notified the parties to the Agreement that it wanted to make changes to its tariff.<sup>7</sup>
6. On June 8, Ameren Missouri filed proposed tariff revisions with the Missouri Public Service Commission.<sup>8</sup>
7. On June 27, the Staff of the Commission filed a motion requesting that the Commission reject or suspend the tariff.<sup>9</sup>
8. Similar motions were also filed by the Office of the Public Counsel and the Missouri Department of Natural Resources.<sup>10</sup>

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<sup>4</sup> Staff Ex 6; Unanimous Stipulation and Agreement, paragraph 6.

<sup>5</sup> Staff Ex. 6, appendix c.

<sup>6</sup> Order Approving Tariff Sheets in Compliance with Commission Order, Comm. File No. GR-2010-0363, item 94.

<sup>7</sup> OPC Ex 1, rebuttal of Ryan Kind, p. 10; and, Staff Ex. 3, proposed sheet no 79.

<sup>8</sup> See this docket, Tracking No. JG-2011-0620, revised sheet 79 through revised sheet 85.

<sup>9</sup> Staff of the Commission's motion to reject or suspend tariff filed on June 29, 2011, item no. 1 in docket.

<sup>10</sup> The Office of the Public Counsel and Missouri Department of Natural Resources' motions to reject or suspend tariff, filed on June 28 and June 29, item nos. 3 and 4 in docket.

9. The tariff sheets set out two programs, residential and general service, each containing a number of “measures” representing items customers intending to reduce energy consumption might purchase. For those items, Ameren offers rebates.<sup>11</sup>

10. The tariff sheets implementing the Energy Efficiency programs provide for uninterrupted availability of the programs and measures programs through December 31, 2012.<sup>12</sup>

11. There is no language in the Agreement suggesting that the term “program” refers to anything less than how those programs appear in the sample tariffs.<sup>13</sup>

12. Through an outside firm, Ameren is required to complete a post-implementation evaluation by December 31, 2012, which shall include usage data for program participants through April 2012.<sup>14</sup>

13. Prematurely cutting measures prior to the end of the evaluation period – April 30, 2012 - will undercut the effort to have the agreed-upon usage data necessary to evaluate the programs.<sup>15</sup>

14. As part of the Stipulation and Agreement, Ameren agreed to a target level of annual funding to be achieved within the next three years ramping up by year three to an amount equal to .5% of gross operating revenues for gas service, including gas cost, or approximately \$850,000, for expenditures prudently incurred on cost-effective programs.<sup>16</sup>

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<sup>11</sup> Ameren’s currently effective tariff; P.C.S. Mo. No. 2, sheet nos. 80 – 85.

<sup>12</sup> Staff Ex 6; Unanimous Stipulation and Agreement, paragraph 6G.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, paragraph 6C.

<sup>15</sup> TR. 253-254.

<sup>16</sup> Staff Ex 6, Unanimous Stipulation and Agreement, paragraph 6B.

15. The parties agreed that Ameren may file proposed revised tariff sheets concerning the Energy Efficiency programs, if Ameren believes circumstances warrant changes.<sup>17</sup>
16. “Programs” are defined as they appear in the tariff sheets attached to the Agreement and filed by Ameren, which includes all of the measures in those programs.<sup>18</sup>
17. Under the Total Resources Cost (TRC) test, a measure in the Energy Efficiency Program with a TRC value greater than 1 is not cost-efficient.<sup>19</sup>
18. Prior to the parties entering into the Unanimous Stipulation and Agreement, there were at least 7 measures with a TRC value of greater than 1.<sup>20</sup>
19. Ameren did not raise any issue regarding cost-effectiveness of the measures prior to implementing the Agreement.<sup>21</sup>
20. The Energy Star label is a way for Ameren Missouri customers to see whether a natural gas product is energy efficient.<sup>22</sup>
21. Ameren is an Energy Star partner.<sup>23</sup>
22. Eight of the measures that the company is proposing to eliminate are labeled Energy Star.<sup>24</sup>
23. Approval of Ameren’s proposed tariff sheets would eliminate its customers’ most requested and most popular rebates.<sup>25</sup>

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<sup>17</sup> *Id.*, paragraph 6C.

<sup>18</sup> Staff Ex. 6, Unanimous Stipulation and Agreement, page 5, Appendix C.

<sup>19</sup> Ameren Ex. 3, direct testimony of Kyle Shoff, page 2, line 22.

<sup>20</sup> Commission Ex. 1, TRC values of all measures as of June 2010 and June 2011.

<sup>21</sup> Staff Ex. 2, Warren surrebuttal, p. 2, lines 13-22.

<sup>22</sup> Transcript, page 77.

<sup>23</sup> Transcript, page 78.

<sup>24</sup> Missouri Department of Natural Resources, Ex. 2, list of program measures Ameren proposes to remove.

<sup>25</sup> Staff Ex. 4, Ameren response to data request.

24. Ameren currently has 19 residential energy efficiency measures and 28 business measures.<sup>26</sup>

25. Approval of Ameren's proposed tariff sheets would eliminate 13, or 68%, of its residential programs and 7, or 25%, of its general service measures.<sup>27</sup>

26. Ameren sent rebates totaling \$39,734 to customers who took advantage of measures that the company now seeks to remove.<sup>28</sup>

27. Home energy audits cost from \$350 to \$600.<sup>29</sup>

28. Those measures Ameren proposes to retain generally require a home energy audit, yet provide minimal rebates to the customers.<sup>30</sup>

29. Customers will not likely take advantage of the remaining measures when comparing the cost of the home energy audit to the amount of the rebate.<sup>31</sup>

30. As of August 2011, there were 486 residential reservations or rebates paid for measures that Ameren proposes to eliminate but no reservations or rebates paid for measures that will remain under Ameren's proposed tariff.<sup>32</sup>

### **Conclusions of Law**

Words should be taken in their ordinary sense in construing contracts, and the parties' mutual intention should be ascertained from the language of the contract and the circumstances surrounding its making.<sup>33</sup> The language in the Agreement states that the

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<sup>26</sup> Ameren Ex. 3, direct testimony of Kyle Shoff.

<sup>27</sup> Missouri DNR Ex. 1, rebuttal testimony of Buchanan, p. 17; TR pages 45, 106 and 107-108.

<sup>28</sup> Staff Ex 1, rebuttal testimony of Stahlman, p 15.

<sup>29</sup> Transcript, page 188.

<sup>30</sup> Transcript 229.

<sup>31</sup> Transcript 229.

<sup>32</sup> Staff Exs. 4 and 8; tariff sheet 81.

<sup>33</sup> *Fulkerson v. Great Lakes Pipe Line Co.*, 75 S.W.2d 844 (Mo. 1934).

tariff shall provide for uninterrupted availability of the energy efficiency programs through December 31, 2012. After which, the cost effectiveness of the programs shall be determined. The Commission has found that prematurely cutting measures prior to the end of the evaluation period will undercut the effort to have the agreed-upon usage data necessary to evaluate the programs. In interpreting the Agreement, the Commission should consider what the parties were attempting to accomplish.<sup>34</sup> Altering those programs prior to the end of the evaluation period would be inconsistent with the parties' intent to gather data and evaluate the programs.

Under the Agreement, Ameren may propose changes to its tariff if the company believes a change in circumstances warrants such. Ameren argues that there has been a change in circumstances and that the company can file a proposed tariff prior to December 31, 2012. This position is not supported by the facts or the law.

The tariff became effective on February 20. Within weeks, Ameren began an attempt to change the tariff. In June it filed proposed changes with the Commission, stating that it analyzed energy efficiency measures and found that some were not cost effective. The evidence shows Ameren was aware that, under its own test, some of the measures were not cost-effective prior to entering into the Agreement. These facts undermine Ameren's position.

Also, specific terms of a contract are given preference over general ones.<sup>35</sup> The language in the Agreement requiring programs to run through December 2012 is specific. However, the Agreement does not state when or under what change of circumstances

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<sup>34</sup> *Glass v. Mancuso*, 444 S.W.2d 467 (Mo. 1969).

<sup>35</sup> *Phillips v. Authorized Investors Group*, 625 S.W.2d 917 (Mo. App. 1981).

Ameren can seek to change its tariff. This term is relatively general. The Commission concludes that approving the tariff prior to December 2012 is contrary to the Agreement.

Finally, the Commission must act in the public interest.<sup>36</sup> The Commission has found the following: that many of the measures Ameren proposes to eliminate are labeled Energy Star, which is a way for customers to determine whether a product is energy efficient; Ameren proposes to eliminate 68% of the residential and 25% of the general service measures; Ameren sent rebates totaling \$39,734 to customers who took advantage of measures the company now seeks to remove; Ameren proposes to retain measures that require an expensive home energy audit yet provide minimal rebates to the customers; and, most telling is that as of August 2011, there were 486 residential reservation or rebates paid for measures that Ameren proposes to eliminate and no reservations or rebates for measures that will remain under the proposed tariff. In light of all of these factors, the Commission concludes that the proposed tariff would not serve the public interest.

## **Decision**

The Commission will reject the proposed tariff sheets because they are not in the public interest. The Commission also concludes that approval of the proposed tariff sheets would be contrary to the parties' intent when entering into the Stipulation and Agreement.

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

1. The following Tariff Sheets, filed under Tariff File No. JG-2011-0620, are rejected:

P.S.C. Mo. No. 2  
8th Revised SHEET No. 79 through 1<sup>st</sup> Revised SHEET No. 85

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<sup>36</sup> *Gulf Transport Co. v. Public Service Com'n*, 658 S.W.2d 448, 456 (Mo. App. 1983)

2. This order shall become effective on November 12, 2011.
3. This case shall be closed on November 13, 2011.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Gunn, Chm., Davis, Jarrett,  
and Kenney, CC., concur, and  
certify compliance with the  
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 2nd day of November, 2011.