

**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 Its Missouri	)	Case No. GT-2011-0410
Energy Efficient Natural Gas Equipment	)	
and Building Shell Measure Rebate	)	
Program.	)	

**PUBLIC COUNSEL'S RESPONSE  
TO ORDER DIRECTING FILING**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its Response to Order Directing Parties to Respond to Commission Inquiry states:

1. The Commission's July 28, 2011 Order Directing Parties to Respond to Commission Inquiry directs each party to file a pleading stating whether "each has any knowledge of improper communications concerning the subject matter of this case."

2. OPC does not have any specific information to prove or disprove whether any party had any improper communications with "the commission, a commissioner, a member of the technical advisory staff, or the presiding officer"<sup>1</sup> regarding Union Electric's d/b/a Ameren Missouri (UE) energy efficiency program in the 60-days that preceded UE's tariff filing on June 8, 2011. Even if a party had communicated with the Commission regarding the issues of this case in the 60-days before June 8, 2011, it could be argued that such communication would not have been improper by definition because no notice had been filed.

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<sup>1</sup> "Extra-record communication" is defined as "any communication outside of the contested hearing process between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and any individual interested in a contested case or anticipated contested case regarding any substantive issue." 4 CSR 240-4.020(1)(H).

3. In UE's August 1, 2011 response to the Commission regarding the existence of any improper communications, UE states that it found no evidence of improper communications after polling "Ameren Missouri employees employed in regulatory and natural gas energy efficiency as well as the attorneys who appear on behalf of the Company at the Commission..." In response, OPC points out that this is not an exhaustive polling by UE because it does not poll executive level employees that may be more likely to communicate with commissioners, commission advisory staff, or the presiding officer. UE's polling of a subset of UE employees is not an assertion by UE that no UE employee had communications regarding UE's energy efficiency programs in the 60 days before UE made its tariff filing. In addition, the polling described by UE which only addressed communications with Commissioners was too narrow in scope to determine whether improper communications occurred because the polling should have included communications with technical advisory staff and presiding officers in addition to communications with Commissioners.

4. UE's response also requests a waiver of Commission rule 4 CSR 240-4.020 requiring the 60 day notice filing. OPC urges the Commission to reject the waiver request. The rule is meaningless if the Commission allows violations of the rule and then attempts to survey every possible interaction over a 60 day period that may have been improper. This is a backwards and ineffective approach at trying to provide the same protections that are provided by the notice requirement. The rule states that "a party may request a waiver of this section for good cause." UE has not provided, nor even attempted to provide, an explanation that establishes good cause for not filing the required notice.

5. Regardless of the existence of improper communications, UE violated Commission's rule 4 CSR 240-4.020(2) without question. The rule specifically mandates a filing that was not made, and the required consequence for not following the rule is that the filing is to be rejected. This rule will carry no weight if it is not enforced. The best way to guarantee the rule has been followed, and that no improper communications occur, is to reject the tariff and direct UE to file the required notice and put all parties and the Commission on notice that future communications on the issues raised in UE's filing would be improper. Rejecting the filing will demonstrate the importance the Commission places on preventing improper communications and it will compel UE and other utilities to be more diligent in complying with the rule in the future.

WHEREFORE, the Office of the Public Counsel respectfully files this response to the Commission's Order Directing Parties to Respond to Commission Inquiry.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ **Marc D. Poston**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 2<sup>nd</sup> day of August 2011.

**/s/ Marc Poston**

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