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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. GT-2011-0410

SURREBUTTAL TESTIMONY

OF

GREGORY W. LOVETT

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a Ameren Missouri**

**St. Louis, Missouri
September, 2011**

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1 **Q. Do you have an overall reaction to the rebuttal testimony filed in this**
2 **case?**

3 A. I do. In my opinion, the primary issue for the Missouri Public Service
4 Commission (Commission) to decide in this docket can be framed in the question “Does
5 Ameren Missouri have the obligation and right to continue to manage its gas energy
6 efficiency programs after the approved unanimous Stipulation and Agreement in Case
7 No. GR-2010-0363?”

8 **Q. Is there any question to Ameren Missouri’s right and obligation to**
9 **manage its natural gas energy efficiency programs after Case No. GR-2010-0363?**

10 A. This case is evidence that there is a question, at least in the minds of the
11 other parties to this case. The Company’s last natural gas rate case, Case No. GR-2010-
12 0363, was settled by an Unanimous Stipulation and Agreement (Stipulation). The terms
13 of that Stipulation require Ameren Missouri to invest in “cost-effective” energy
14 efficiency programs (Stipulation, ¶ 6B), allows Ameren Missouri to make changes to the
15 tariffs when circumstances warrant it (Stipulation, ¶ 6G), makes Ameren Missouri
16 responsible for all final decisions regarding these programs (Stipulation, ¶ 6D) and allows
17 the other parties to challenge the prudence of any energy efficiency expense in future rate
18 cases (Stipulation, ¶ 6H). Yet, when Ameren Missouri attempted to manage its programs
19 in accordance with the Stipulation, the other members of the Energy Efficiency Advisory
20 Group (EEAG) filed to delay the decisions the Company feels needs to be modified.
21 They claim the tariff cannot be changed except to add measures. That is in direct conflict
22 with the Stipulation.

23

1 **Q. Is the suspension of this tariff problematic for Ameren Missouri?**

2 A. The tariff suspension leaves Ameren Missouri unable to make other
3 changes to its energy efficiency portfolio while the allegations about this modification are
4 sorted out by the Commission. For example, if Ameren Missouri decides it needs to
5 modify the incentive levels or even add new measures to its portfolio, to do so would
6 require a tariff filing. Ameren Missouri cannot make a second tariff filing while this
7 tariff change is pending, unless it were to withdraw this tariff filing and file another. Of
8 course, this would only further delay the process, as that tariff would likely then be
9 suspended and the same issues raised.

10 The suspension of this tariff stands in the way of the Company being able to
11 effectively manage its investment. At this point, the Company is caught in a situation
12 where it is responsible for energy efficiency investment decisions but is unable to
13 exercise its responsibility due to the lengthy case now before the Commission. This tariff
14 was filed on June 8th and will take almost five months to resolve, assuming the tariff is
15 not further suspended (currently, it is suspended until November 5th).

16 **Q. Isn't the tariff suspension part of the normal process for the parties to**
17 **voice any concerns over Ameren Missouri's proposed tariff change?**

18 A. Normally, that would be the typical process. In this case, however, the
19 parties have jointly agreed to a stakeholder process, which is the EEAG, as set forth in
20 the Stipulation. The benefit of the EEAG comes from obtaining the input of other
21 parties, especially when that input disagrees with an action the Company proposes to
22 take. That purpose is fulfilled by the EEAG and the requirement of the Stipulation to
23 circulate tariff sheets to the EEAG for review and comment. The feedback acquired as

1 part of this process, even if a recommendation is not accepted, provides the Company
2 with the same information and benefit. In other words, the Company is on notice that an
3 EEAG member disagrees with the change and the reason for that disagreement. The
4 burden is then upon Ameren Missouri to use that information appropriately.

5 **Q. In this tariff revision, which removes non cost-effective measures from**
6 **the program, were the requirements of the Stipulation followed?**

7 A. Yes, they were.

- 8 ▪ Yes, the changes were discussed with the EEAG and proposed
- 9 tariffs were circulated.
- 10 ▪ Yes, the programs will be offered uninterrupted through December
- 11 31, 2012.
- 12 ▪ Yes, the proposed changes are designed to ensure the programs
- 13 will be cost effective.
- 14 ▪ Yes, funding has been provided and the Company is planning to
- 15 meet the target levels.
- 16 ▪ Yes, the program evaluation will be completed on all measures
- 17 offered through April 30, 2012 in which customers participated.
- 18

19 **II. COST EFFECTIVE ENERGY EFFICIENCY PROGRAMS**

20 **Q. Why did Ameren Missouri propose to remove certain measures from**
21 **its natural gas energy efficiency programs?**

22 A. Ameren Missouri has proposed changes to its tariffs as a necessary step in
23 the prudent operation of the Company's natural gas energy efficiency portfolio. As I
24 stated in my direct testimony, this decision is in response to and consistent with the terms
25 of the Stipulation. The Stipulation states "The Parties agree that Ameren Missouri may
26 file with the Commission proposed revised tariff sheets concerning the Energy Efficiency
27 programs, if Ameren Missouri believes circumstances warrant changes." (Stipulation, ¶
28 6G) It also states, "Ameren Missouri agrees to a target level of annual funding ..., for

1 expenditures prudently incurred on cost-effective programs.” (Stipulation, ¶ 6B.) The
2 Company does not believe these measures at issue in this case are cost effective and
3 believes they should be removed from the Company’s natural gas energy efficiency
4 programs.

5 **Q. Do the parties in this case agree that Ameren Missouri can modify its**
6 **natural gas energy efficiency tariffs?**

7 A. No party denies that the explicit language of the Stipulation (¶ 6G) allows
8 the Company to file to modify these tariffs “if circumstances warrant changes.” Mr.
9 Stahlman interprets this portion of the Stipulation very restrictively, “The purpose of this
10 sentence was not to limit Ameren Missouri’s measures to those listed in Appendix C of
11 the Stipulation, but to allow Ameren Missouri to file revised tariff sheets in order to ramp
12 up to the target in Paragraph 6.B.” (Stahlman rebuttal, p. 5, l. 14-16) He implies the
13 Company’s ability to revise the tariff is limited to adding measures. Of course, the
14 language of the Stipulation itself does not contain any language stating revisions are
15 limited to inserting additional measures.

16 **Q. Do the parties believe there is any other restriction on Ameren**
17 **Missouri’s ability to modify these tariffs?**

18 A. Yes. Mr. Buchanan and Mr. Kind argue that modification cannot be done
19 until after an evaluation has been completed or that modifications are limited to the
20 addition of new measures. (Buchanan rebuttal, p. 17, l. 18-21 and Kind rebuttal, p. 13, l.
21 15-22). Again, the Stipulation contains no such restriction.

1 **Q. Could the additional information provided by a post-implementation**
2 **evaluation constitute circumstances that warrant changing the Company's natural**
3 **gas energy efficiency measures and/or programs?**

4 A. Yes, of course it can. The Company fully expects that the evaluation
5 results will help shape its energy efficiency portfolio in the future (and that it should not
6 be used to question prudence looking backward). But the language of the Stipulation
7 does not require that changes be made only after an evaluation is complete or when the
8 Company wants to add measures. In this case, as explained in the surrebuttal testimony
9 filed by Kyle Shoff, the Company received additional information which caused it to run
10 a total resource cost (TRC) analysis on its existing measures and programs. Once the
11 Company had those results, it acted as it believed was prudent. That is, the Company
12 notified the EEAG that it believed certain measures were not cost-effective (i.e. TRC less
13 than one) and, after circulating tariffs and holding discussions, that Ameren Missouri
14 would be modifying the tariff to remove these measures.

15 **Q. Mr. Stahlman points out that Mr. Shoff's analysis does not constitute**
16 **an evaluation. Do you agree?**

17 A. I do, but I believe Mr. Stahlman misinterprets the requirements of the
18 Stipulation and what Ameren Missouri has done. Ameren Missouri does not claim that
19 Mr. Shoff's analysis is a post-implementation evaluation. A post-implementation
20 evaluation will be completed on Ameren Missouri's natural gas energy efficiency
21 measures no later than December 31, 2012. It will evaluate all measures implemented
22 between February 20, 2011 (the date new rates took effect after approval of the
23 Stipulation) and April 30, 2012, as required by ¶ 6C of the Stipulation, as long as a

1 customer participated in that measure. However, because the Company became aware
2 that some current measures are likely not cost effective even before the evaluation has
3 been completed, the Company has filed to remove those measures from its portfolio.

4 **Q. Doesn't the fact that the parties agreed with the decision to offer the**
5 **current measures protect the Company from claims of imprudence?**

6 A. Although Mr. Kind professes that the Company's argument is "not
7 rational" and that no party would challenge the prudence until after an evaluation is
8 completed (Kind rebuttal, p. 13, l. 8-14) and even though Mr. Stahlman testified that the
9 programs were declared cost effective with pre-implementation analysis (Stahlman
10 rebuttal, p. 4, l. 3-9), Ameren Missouri does not believe the Stipulation resolves all issues
11 related to the prudence of the Company's energy efficiency expenditures. The Company
12 agrees that it is unlikely that any party to the Stipulation will argue that the initial
13 decision to offer the current portfolio is imprudent. After all, the parties are all
14 signatories to the Stipulation.

15 However, prudence is not evaluated only at the time of the initial decision. If
16 circumstances change, a program or measure that was at one time prudent may no longer
17 be cost effective. If the Company failed to act on new information, others may allege
18 imprudence. This is the type of imprudence claim that Ameren Missouri seeks to avoid.
19 In the matter before the Commission today, Ameren Missouri obtained new information
20 which indicated that certain measures are no longer cost effective. Given this
21 development, Ameren Missouri acted prudently in seeking to remove the non-cost
22 effective measures.

1 **Q. Mr. Buchanan pointed out that no prudence disallowance has been**
2 **ordered for the Company’s energy efficiency expenditures in the Company’s last**
3 **couple of natural gas rate cases (Buchanan rebuttal, p. 11, l. 11-16.) Is his statement**
4 **true?**

5 A. It is a fact that the Company has not had any natural gas energy efficiency
6 expenditure disallowed; it is also true expenditures prior to February 20, 2011, stemmed
7 from decisions made by a consensus collaborative. That consensus collaborative, as
8 pointed out by Mr. Buchanan, was only required to “consider cost-effectiveness”
9 (Buchanan rebuttal, p. 5, l. 15-21). Ameren Missouri believes this is a different standard
10 than is contained in the current Stipulation.

11 Additionally, while the Company is pleased that the parties and the Commission
12 have agreed that Ameren Missouri has been prudent in its expenditures up to and
13 including the last rate case, this fact has no bearing on whether the Company is acting
14 prudently by seeking to remove non cost-effective measures today.

15 **Q. Mr. Stahlman points out that the Stipulation does not require Ameren**
16 **Missouri to do any TRC analysis during the implementation of its natural gas**
17 **energy efficiency programs. Do you disagree?**

18 A. Yes. While the language of the Stipulation may not explicitly require
19 TRC, or other cost-benefit) analysis, to be performed before the evaluation, it does
20 require Ameren Missouri to only invest in “cost-effective” energy efficiency programs
21 (Stipulation, ¶ 6B), it says that Ameren Missouri is responsible for all final decisions
22 regarding these programs (Stipulation, ¶ 6D) and it allows the other parties to challenge
23 the prudence of any energy efficiency expense (Stipulation, ¶ 6H). If the Stipulation gave

1 Ameren Missouri a free pass until it completed an evaluation, then there would be no
2 need to retain the right to challenge prudence. Once Ameren Missouri had additional
3 information indicating several measures were not cost effective, the Company believed
4 (and still believes) it has an obligation to act to remove those measures.

5 **III. UNINTERRUPTED ENERGY EFFICIENCY PROGRAMS**

6 **Q. The other parties argue that Ameren Missouri's filing violates the**
7 **terms of the Stipulation because the Company agreed to provide "uninterrupted**
8 **availability of its energy efficiency programs (Stahlman rebuttal, p. 6, l. 12-17;**
9 **Buchanan rebuttal, p. 5, l. 7-14; Kind rebuttal, p. 19, l. 13-16). Is the Company**
10 **compliant with this portion of the Stipulation?**

11 A. Yes, it is. The Rate Case Stipulation reads, "Such tariffs shall provide for
12 uninterrupted availability of these energy efficiency programs through December 31
13 2012." (Stipulation, ¶ 6G). The distinction between the terms *program* and *measure* is
14 important. A "program" is a combination of one or more energy efficiency measures.
15 An energy efficiency "measure" is a device, appliance or practice which, when installed
16 in a home, business or manufacturing process, results in a reduction in the amount of
17 energy used per unit of useful service. The specific rebate is associated with the measure.
18 The Stipulation uses the term program and does not mention measures. While it is true
19 that the Company must offer uninterrupted availability of its Residential *program* and of
20 its General Service *program*, there is no requirement that it must offer uninterrupted
21 availability of each individual measure within those programs. Individual measures can
22 be removed, added or modified and without interrupting the availability of the programs.
23 Not only does the language of the Stipulation require only that the programs be

uninterrupted, but Messrs. Stallman, Buchanan and Kind's interpretation of the Stipulation does not allow for changes when measures are not cost-effective. This is contrary to the specific language of the Stipulation and denies Ameren Missouri the ability to effectively manage its energy efficiency investment.

IV. LEVEL OF ENERGY EFFICIENCY INVESTMENT

Q. Mr. Buchanan argues that removing programs limits the Company's energy efficiency expenditures and is contrary to the requirements of the Stipulation (Buchanan rebuttal, p. 8, l. 7-23). Do you agree?

A. No, and I am not sure why removing non cost-effective measures is translated as limiting energy efficiency expenditures. The Company is merely asking to remove measures it does not believe are cost effective. We don't believe the Commission wants Ameren Missouri to spend money any way it can merely to reach a targeted amount. Instead, the Commission expects the Company to prudently invest in measures and programs to reach a targeted amount.

Q. What is the investment commitment from the Stipulation?

A. The Commission approved \$700,000 to be included in the Company's revenue requirement for energy efficiency. The Company agreed to a target level of annual funding by ramping up by year three to approximately \$850,000 (Stipulation, ¶ 6B). Of the \$700,000, \$263,000 is administered by DNR as part of their low-income weatherization program (Stipulation, ¶ 6A). Additionally, the Company has set aside approximately \$50,000 (annually) in order to fund the required evaluation. Of the \$700,000 included in rates, that leaves \$387,000 to be spent on natural gas energy efficiency programs administered by Ameren Missouri.

1 **Q. Mr. Stahlman points out that the Company spent \$64,217 as of July of**
2 **2011 and that the Company will need to double its expenditures in order to reach**
3 **the amount being collected in rates (Stahlman rebuttal, p. 15, l. 12-22). Mr.**
4 **Buchanan asserts it is “unlikely” that Ameren Missouri will invest at the level**
5 **required by the Stipulation (Buchanan rebuttal, p. 20, l. 2-8). Do you disagree?**

6 A. Yes, I disagree. Focusing only on the amount spent and ignoring the
7 amount being held for commitment via a customer reservation, can paint a misleading
8 picture. Ameren Missouri reports this information through the quarterly report required
9 by the Stipulation, which sets forth “both the amount spent and the amount committed”
10 for Ameren Missouri’s natural gas energy efficiency portfolio (Stipulation, ¶ 6E). As of
11 the end of August, Ameren Missouri incurred \$75,000 in expenditures with an additional
12 \$90,000 in rebates reservations plus \$9,000 in administration fees. This means
13 approximately half of the \$387,000 has been spent or is committed to be spent.

14 Ameren Missouri will take steps to increase participation in its energy efficiency
15 programs if needed. The Company has not yet advertised (other than providing
16 information on it’s website) or conducted a promotional campaign to build demand for its
17 programs. It would not be prudent for the Company to undertake any promotional efforts
18 until this case is resolved. The almost six month delay in modifying the tariff is going to
19 further complicate the Company’s efforts to spend the initial \$387,000 in the first twelve
20 months of these programs. Of course, the Company could have advertised just to force
21 participation rates up and to spend more money, even though part of that spend would
22 occur on what it believes to be non-cost effective measures. Spending customer’s money
23 just to say a target was reached is not really the goal of the parties, and it certainly was

1 not the goal of Ameren Missouri when the Stipulation was signed. The Company needs
2 this case resolved so that it can go back to the job of managing its energy efficiency
3 programs.

4 **V. OTHER CONCERNS RAISED BY PARTIES**

5 **Q. Mr. Stahlman testified that Ameren Missouri did not comply with the**
6 **terms of the Stipulation because it failed to circulate the tariff sheets prior to filing.**
7 **Is he correct?**

8 A. No. The Stipulation contains a requirement that, “Prior to filing any such
9 proposed revised tariff sheets with the Commission, Ameren Missouri shall circulate
10 those sheets for review and comment by the EEAG.” (Stipulation, ¶ 6G).

11 The Company in fact did “circulate those sheets for review and comment by the
12 EEAG.” On April 19th, Ameren Missouri sent the EEAG a red-lined draft of the revised
13 tariff, the TRCs, and the TRC work papers. On April 25th, the EEAG had a meeting to
14 discuss these documents. During the meeting, the Company agreed to provide certain
15 supplemental information, which was supplied on May 13th. Along with that
16 supplemental information, the Company sent out another set of revised tariff sheets and
17 asked for comments. Ameren Missouri also offered to work with any party who had
18 questions about how the TRCs were calculated. Staff requested a follow up discussion
19 and a webinar was held with Staff on May 24th. On May 27th, Ameren Missouri filed the
20 tariff sheets it had circulated on May 13th. Then, after further consideration of the EEAG
21 comments, Ameren Missouri decided to make another revision to the tariffs in order to

1 remove two additional non cost-effective measures that it had previously not identified.¹
2 On June 8th, prior to the revised tariffs being filed, Ameren Missouri emailed the EEAG
3 and indicated that because of the input received it would be withdrawing the previous
4 tariff filing and would then file a revised tariff which would remove two additional
5 measures. The revised tariff was then filed.

6 The purpose of this portion of the Stipulation is to prevent the Company from
7 filing a tariff revision without a member of the EEAG knowing it was going to be filed
8 and to ensure that the EEAG had an opportunity to comment upon the proposed
9 revisions. Clearly that occurred. The EEAG was sent two versions of the tariff and the
10 final change was only to remove two additional measures with a TRC value of less than
11 one, which was communicated to the EEAG before the filing was made. The EEAG
12 knew exactly what Ameren Missouri was going to file before it was filed.

13 **Q. Mr. Buchanan's testimony discusses the fact that Ameren Missouri is**
14 **an ENERGY STAR® partner and makes the comment that the removal of**
15 **measures that involve ENERGY STAR appliances "seem to run contrary to the**
16 **terms of an ENERGY STAR Partner." (Buchanan rebuttal, p. 18, l. 20-23.) How do**
17 **you respond?**

18 A. Ameren Missouri is an ENERGY STAR partner. The partnership
19 agreement does not require Ameren Missouri to offer rebates for every single ENERGY
20 STAR labeled product. It is up to the partner (here, Ameren Missouri) to determine
21 which products to promote. The Company encourages customers to use the ENERGY

¹ Specifically, OPC sent Ameren Missouri an email on May 26th which pointed out that Ameren Illinois had a TRC of below one for two measures that Ameren Missouri was proposing to keep. Ameren Missouri re-examined those measures and determined they should be removed. This is likely the opposite of what OPC had hoped to accomplish, but these changes were made because of the feedback provided by OPC.

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1 STAR label as a way to determine if a measure is energy efficient. Ameren Missouri is
2 in regular contact with our ENERGY STAR representative and is in full compliance with
3 the requirements of its ENERGY STAR Partnership agreement. Mr. Buchanan's
4 assertion offers nothing more than a vague implication that Ameren Missouri's actions
5 "seem" to violate the contract. This is nothing more than a red herring and certainly is
6 not true.

7 **Q. Mr. Buchanan also warns that changing the Company's energy**
8 **efficiency tariffs may confuse customers (Buchanan rebuttal, p. 20, l. 11-18). Is this**
9 **a concern for Ameren Missouri?**

10 A. Ensuring that our customers are not confused by our energy efficiency
11 programs is always a concern. However, the obvious conclusion of this argument would
12 be to say that once the Company starts offering energy efficiency programs, it can never
13 change that offering. Mr. Buchanan himself states that programs and measures can be
14 changed after an evaluation – wouldn't that also run the risk of causing confusion? This
15 concern does not provide sufficient justification to prohibit Ameren Missouri from
16 running its programs in a prudent manner.

17 **Q. Does this conclude your surrebuttal testimony?**

18 A. Yes, it does.

