

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

Roman Dzhurinskiy and Zinaida Dzurinskaya,	)	
	)	
Complainants,	)	
	)	
vs.	)	<b>File No. EC-2016-0001</b>
	)	
Union Electric Company d/b/a Ameren Missouri	)	
	)	
Respondent.	)	

**MEMORANDUM OF LAW IN SUPPORT OF THE OFFICE OF PUBLIC COUNSEL’S  
MOTION FOR SUMMARY DETERMINATION**

COMES NOW the Office of the Public Counsel (“OPC” of “Public Counsel”) and for its Motion for Summary Determination, pursuant to Missouri Public Service Commission (“Commission”) Rules 4 CSR 240-2.117(1), states:

**Introduction**

Public Counsel files this Memorandum of Law in support of its Motion for Summary Determination and respectfully moves for an order granting summary determination in favor of Mr. Roman Dzhurinskiy and Ms. Zinaida Dzurinskaya. Furthermore, Public Counsel requests the Commission’s order instruct Union Electric Company d/b/a Ameren Missouri (“Ameren”) to follow its tariff exempting qualified low-income customers from the Rider EEIC charge.

**Standard of Approval**

The standard for approval of Public Counsel’s motion for summary determination requires a showing that (1) there is no genuine issue as to any material fact, (2) that any party is entitled to relief as a matter of law as to all or any part of the case, and (3) the Commission determines granting summary relief is in the public interest. *See Earth Island Institute d/b/a Renew Missouri, et al v. Kansas City Power & Light Company*, Case No. EC-2013-0379, Order

Denying Motions for Summary Determination of Renew Missouri and KCP&L/GMO, But Granting Motion for Summary Determination of Empire, *Iss'd* Oct. 3, 2013, p. 3; Commission Rule 4 CSR 240-2.117(1)(E). As will be shown herein, Public Counsel's motion meets each of these elements and should therefore be granted.

**No Genuine Dispute as to Any Material Fact**

Filed simultaneously with this *Memorandum* is Public Counsel's Motion for Summary Determination and attached affidavits and documents demonstrating that there is no genuine dispute as to any material fact. Rather, the dispute between the parties is to the application of the relevant law – the tariff – to the facts set forth in Public Counsel's *Motion for Summary Determination*.

**Complainants are Entitled to Relief as a Matter of Law**

The Missouri Energy Efficiency Investment Act (“MEEIA”) provides that the Commission may exempt low-income customer classes from energy efficiency charges for approved MEEIA plans. Mo. Rev. Stat. § 393.1075.6. In ER-2014-0258, Ameren's most recent rate case, the Commission approved tariff language that excluded certain low-income customers from paying the Energy Efficiency Investment Charge (“EEIC”). Mo. P.S.C. Schedule No. 6, 1<sup>st</sup> Revised Sheet No. 90.1. In particular, the tariff sheet provides a definition describing the eligibility requirements for a customer to be exempt from paying the energy efficiency charge.

“Low-Income” customers means those Service Classification 1(M)-Residential customers eligible for the low income exemption provisions contained in Section 393.1075.6, RSMo. As approved in File No. ER-2014-0258, customers eligible under this definition will be exempt from Rider EEIC charges for 12 billing months following assistance received from either Missouri Energy Assistance (a.k.a. Low Income Home Energy Assistance Program or LIHEAP), Winter Energy Crisis Intervention Program, Summer Energy Crisis Intervention Program, the Company's Keeping Current Low Income Pilot Program, and/or the Company's Keeping Cool Low Income Pilot Program.

Mo. P.S.C. Schedule No. 6, 1<sup>st</sup> Revised Sheet No. 90.1. A tariff is “a document published by a public utility, and approved by the commission, that sets forth the services offered by the utility and the rates, terms and conditions for the use of those services.” 4 CSR 240-3.010(28). Tariffs approved by the Commission are binding on both the utility and the customers with the force of law. *Missouri P. R. Co. v. Terrell*, 410 S.W.2d 356, 360 (Mo. App. S.D. 1966).

The tariff at issue in this case provides the terms and conditions by which residential customers are exempt from paying the Rider EEIC charge. Specifically, customers are exempt from the charges for 12 billing months “following assistance received from” one of the listed programs. *See* Mo. P.S.C. Schedule No. 6, 1<sup>st</sup> Revised Sheet No. 90.1. In this case, the complainants are residential customers who received assistance under Missouri’s Low Income Home Energy Assistance Program on December 29, 2014 (Attachment C). LIHEAP is a program that is expressly identified in the tariff sheet as a way to satisfy the eligibility requirement for the low-income exemption. Thus, based on the plain language of Ameren’s tariff sheet, the complainants are entitled to exemption from the Rider EEIC charge for 12 billing months.

In its *Answer*, Ameren states that it “determined, and communicated to Complainant, that he was not eligible for the exemption from the Rider EEIC charge because he had not received an energy assistance pledge on his residential electric utility account with the Company within the last 12 months.” (See *Answer*, Doc. No. 7, p. 2). By taking the position that the assistance must have been applied to the customer’s electric utility account, Ameren seeks to change the meaning of the tariff and improperly require customers to meet an additional qualification that does not appear in the clear and unambiguous language of its tariff.

When a tariff is clear and unambiguous the Commission cannot give it another meaning. *See State ex rel. Associated Natural Gas Co. v. Publ. Serv. Comm’n of the State of Mo.*, 37 S.W.

3d 287, 293 (Mo. App. W.D. 2000). Neither can the Commission allow Ameren to do so. Importantly, where the language of a tariff is unambiguous, evidence of intent or historical interpretation is not needed. *In the Matter of D.F.M. Investment Co., a Missouri Corporation, Doing Business as St. Louis Honda vs. Union Electric Company*, 1 Mo. P.S.C. 3d 420 (1992).

Even though the tariff is clear, Ameren attempts to justify its position by referring to portions of testimony from its recent rate case (*See Answer*, Doc. No. 7, pp. 2-3). Here too, Ameren is wrong. If the Commission is going to look beyond the plain language of the tariff, it should not examine the testimony Ameren offers in its *Answer*. Instead, the Commission should examine the stipulation and agreement signed by Ameren that reflects the final agreement of the signatories regarding the low-income Rider EEIC exemption. *In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Annual Revenues for Electric Service*, Case No. ER-2014-0258, The Non-unanimous Stipulation and Agreement Regarding MEEIA Low Income Exemption and LED Lighting Issues, Doc. No. 444).

In pertinent part, the stipulation and agreement provides that “[a] qualifying low-income customer will be defined as any residential customer who, in any of the prior 12 billing months, has received assistance from any of the following qualifying low-income programs: Missouri Energy Assistance (a.k.a. Low-Income Home Energy Assistance Program or “LIHEAP”), Winter Energy Crisis Intervention Program (“ECIP”), Summer ECIP, Keeping Current, and Keeping Cool.” (*Id*). Based on the stipulation and agreement, it remains clear that the complainants qualify under the exemption. Complainants are residential customers, who have “received assistance from ... Missouri Energy Assistance (a.k.a. Low-Income Home Energy Assistance Program or “LIHEAP”)[.]” (*Id*). The complainants qualify under the clear and unambiguous language in the tariff sheet, and so, are entitled to relief.

## **Granting the Relief Requested Is in the Public Interest**

An order granting the relief requested herein furthers the public interest in several ways. First, granting relief to the complainants will enable them to enjoy the low-income Rider EEIC exemption contemplated in the MEEIA statute and given effect by the Commission's order in Ameren's most recent rate case. Mo. Rev. Stat. § 393.1075.6. Second, an order finding that Ameren's tariff sheet Mo. P.S.C. Schedule No. 6, 1<sup>st</sup> Revised Sheet, No. 90.1 applies to customers that received assistance under any of the listed programs – regardless of whether or not the assistance was applied to the customer's Ameren account – benefits all qualified low-income customers. The tariff sheet establishes the parameters of the “low-income” class for purposes of the exemption. It is uncontroverted that the complainants received LIHEAP assistance. Ameren seeks unlawfully to exclude certain low-income customers from the unambiguously defined exempted class. The purpose of the exemption is to help people who are identified as low-income. All qualified low-income customers identified by the tariff should benefit from the exemption – not just those customers that Ameren desires. Third, requiring Ameren to follow the unambiguous language of its tariff will enable the public to have confidence in the terms and conditions associated with receiving electric utility service.

Granting summary determination in this case will resolve this case in an expedient manner. The Commission has recognized that “[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest.” *In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases*, Case No. EU-2005-0041, Determination on the Pleadings and Order Denying Application, p. 7). Here, there is no genuine dispute as to any material fact. The complainants are Ameren residential customers who have received LIHEAP assistance within the last twelve (12)

months. Thereby, under the language of Ameren's tariff, the complainants fall within the scope of the low-income exemption to paying the energy efficiency charge.

WHEREFORE Public Counsel requests that the Commission will issue an order granting summary determination in favor of the complainants; finding that the complainants meet the qualifications listed in Ameren's tariff sheet Mo. P.S.C. Schedule No. 6, 1<sup>st</sup> Revised Sheet No. 90.1; requiring Ameren to exclude complainants and all other qualifying low-income customers from paying the Rider EEIC charge; and granting such other and further relief as the Commission deems just.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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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 14<sup>th</sup> day of September 2015:

/s/ Tim Opitz