

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

In the Matter of the Energy Efficiency            )  
Programs of Union Electric Company            )       Case No. \_\_\_\_\_  
d/b/a Ameren Missouri.                            )

**PUBLIC COUNSEL’S MOTION TO RESOLVE ISSUES  
REGARDING UE’S ENERGY EFFICIENCY PROGRAMS and  
MOTION FOR EXPEDITED CONSIDERATION**

**COMES NOW** the Missouri Office of the Public Counsel and for its Motion to Resolve Issues Regarding UE’s Energy Efficiency Programs and Motion for Expedited Consideration states:

1.       In Union Electric Company d/b/a Ameren Missouri’s (“UE”) 2007 rate case, Case No. GR-2007-0003, the Commission authorized a \$6 million rate increase for UE. UE’s rate increase was the result of a Stipulation and Agreement (“2007 Stipulation”) between the parties that resolved all issues in the case.

2.       The parties agreed through the 2007 Stipulation that the Residential and Commercial Energy Efficiency Collaborative (“RCEEC”) would determine all details of the energy efficiency programs. Paragraph 17 of the 2007 Stipulation states in part that:

The Collaborate will determine the details of these programs, giving due consideration to the administrative costs that will be incurred by AmerenUE. If an issue arises where consensus cannot be reached, the issue will be brought before the Commission for resolution.

Accordingly, OPC advises the Commission that issues have arisen where consensus could not be reached among all parties involving: 1) the appropriate budget levels; 2) the scope and scale of the programs; and 3) the cost recovery mechanism. OPC brings these issues to the Commission for resolution pursuant to the terms of the 2007 Stipulation.

### **UE Unilaterally Ceased the Rebate Program**

3. During an October 18, 2010 RCEEC conference call, UE representative Greg Lovett notified the collaborative that UE had stopped accepting new rebate applications from residential customers on or about October 14, 2010. UE took this action despite the fact that it embarked on a new marketing campaign to increase customer participation in September and October 2010. UE stopped accepting rebates from residential customers while also running the new marketing campaign with radio ads, billboards, billing inserts and a press release just one month prior to halting the application process for new residential applications.<sup>1</sup> UE's marketing campaign was not approved by the RCEEC. UE's marketing campaign continued to encourage residential customers to participate in the program despite that fact that the program is closed to new applicants. UE's decision not to provide additional funding for the 2010 budget year by rejecting the option to use the already authorized regulatory asset deferral mechanism<sup>2</sup> to recover the costs was an abuse of UE's discretion because it caused UE to deny residential applications at the same time the Company was involved in efforts to promote and encourage additional residential customer participation.

4. During the October 18, 2010 RCEEC meeting, the RCEEC voted 3-1 in favor of allocating more program funds for 2010 (which UE could recover through the use of the previously authorized regulatory asset account) so that rebates could again become available to residential customers for the remainder of 2010. OPC, Staff and the

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<sup>1</sup> Attachment A is a Highly Confidential memorandum regarding UE's rebate marketing campaign.

<sup>2</sup> See Stipulation and Agreement approved by the Commission in Case No. GR-2007-0003, *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Natural Gas Service Provided to Customers in the Company's Missouri Service Area*.

Department of Natural Resources (DNR) all voted to continue the program by allocating more program funds for 2010 and making use of the regulatory asset account previously authorized by the Commission, while UE cast the only vote to continue suspension of the program. Despite this vote in favor of allocating more program funds for 2010 to resume the program, UE continues to turn away ratepayers that respond to UE's recent marketing campaign seeking rebates for the purchase of energy efficient equipment.<sup>3</sup> UE's marketing campaign could easily mislead customers into purchasing equipment under the incorrect assumption that UE will provide that customer with a rebate for their purchase.

5. One example of UE's misleading marketing campaign that was still underway even after UE stopped taking rebate applications from its residential customers is the billing insert (See Attachment B) promoting UE's energy efficiency programs. The two-sided bill insert has a large gas burner flame on one side and encourages customers to act with the message in large print stating that "your gas rebate awaits." The other side of this bill insert tells customers "when you purchase select Energy Star appliances before 12/31/10, we'll pay up to half the purchase price." The bill insert does not contain any limitation on the availability of rebates such as a statement saying that funding is limited or that rebates are only available while funds last. This bill insert was still arriving in the mailboxes of residential customers even though UE had already stopped taking new rebate applications for residential customers.

6. UE's customers are nearing the winter heating season and will begin to see increases to their natural gas usage. A ratepayer's increased usage will come with an increased bill, and this increased bill will send a price signal to ratepayers to improve

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<sup>3</sup> UE's website states "Due to the large response rebate funds have been depleted for 2010." <http://www.ameren.com/sites/aue/source/naturalgascenter/pages/home.aspx>.

their energy efficiency. Due to these price signals, ratepayers are more motivated to increase their efficiency during the winter heating season, and taking away the additional incentive provided by rebates misses the best opportunity to significantly increase the number of ratepayers installing energy efficient equipment in their homes.

7. The level of participation by UE's residential customers in its gas energy efficiency programs has been higher in 2010 than in prior years. This type of steady increase in participation after an energy efficiency program has been operating uninterrupted for several years is not uncommon. This suggests that UE could have easily provided many more ratepayers with rebates during the months of October, November and December if it had not spent thousands of dollars on the Fall 2010 marketing campaign.

8. UE knew or should have known that it was going to suspend UE's rebate program at the same time it was wastefully spending ratepayer funds to market the program. This begs the question of what motivated UE to market a service to ratepayers at a time when it knew or should have known that the marketing campaign would accelerate the date when the Company would need to stop accepting residential rebate applications.

9. The Stipulation between the parties does not specifically address what actions UE or the RCEEC are to take in the event the \$325,176 budget for the Energy Efficiency Program in 2010 is depleted before the end of the year. This question should be considered and determined by the RCEEC or determined by the Commission if the RCEEC cannot reach a consensus. Since the RCEEC could not reach consensus, this matter is ripe for resolution by the Commission.

**UE Continues to Abuse its Discretion by Refusing to Use a Regulatory Asset Deferral Mechanism**

10. UE also advised the RCEEC during the October 18, 2010 RCEEC conference call that it intends to file a tariff for 2011 programs approximately 30 days before the end of 2010. UE and the rest of the collaborative worked together to develop an expanded set of programs which adds substantial additional programs in addition to those offered in 2010. The 2010 programs had a budget of over \$300,000 and the programs were oversubscribed. UE told the collaborative that the 2011 budget will be limited to \$100,000 because it does not want to use the regulatory asset mechanism to recover the costs that exceed the \$100,000 amount that UE customers are already contributing in their rates every year. If UE will only provide \$100,000 in funding for the 2011 programs (a reduction of over \$200,000 from the 2010 budget level), then the programs should be reduced instead of expanded to avoid a repeat of the present situation where customers seeking rebates are being turned away by UE. If UE insists upon offering a set of 2011 programs for which the 2011 budget is vastly insufficient (because it refuses to use the regulatory asset deferral mechanism to recover the additional costs that would be incurred if the budget is set at a level greater than \$100,000) then UE will again be abusing its discretion to determine when it will use the previously authorized regulatory asset deferral mechanism.

11. Recent Commission opinions indicate a Commission policy objective of increasing expenditures on energy efficiency and conservation. In the Commission's Report and Order on DSM Funding in the most recent rate case for The Empire District Gas Company ("Empire"), Case No. GR-2009-0434, the Commission determined "that a challenging, yet reasonable and attainable goal for Empire's energy efficiency programs

is to reach .5 percent of annual operating revenues, including the cost of gas, in 2011 and 2012.”<sup>4</sup> The Commission explained that this goal “is consistent with goals that the Commission is setting for other utilities...”<sup>5</sup> Chairman Clayton further explained in a Concurring Opinion that “the Commission is making a strong stand on funding of Energy Efficiency (EE). As part of the Commission’s recent shift of policy on EE, this rate case is the second time the Commission is pegging its goal of EE funding at .5% of operating revenues of the company...”<sup>6</sup> If the same funding goal was applied to UE’s energy efficiency program funding, UE would fall short. UE’s proposed 2011 expenditure levels of \$263,000 for low-income weatherization and \$100,000 for energy efficiency rebates are approximately 0.2178% of UE’s annual operating revenues.<sup>7</sup> In 2010, UE’s expenditures on energy efficiency programs had expanded to the point where UE was, for the first time, more than half-way to reaching the expenditure level of .5% of annual operating revenues. With the lower level of energy efficiency expenditures that UE is proposing for 2011, the Company would no longer be even half-way towards the .5% expenditure level.

12. Pursuant to 4 CSR 240-2.080(16), OPC requests expedited consideration of this matter. A quick resolution, preferably before the end of November 2010, could result in rebate funds being available again to fund rebates for residential consumers in

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<sup>4</sup> *In the Matter of The Empire District Gas Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company*, Case No. GR-2009-0434, Report and Order on DSM Funding, February 24, 2010, pp. 12-13.

<sup>5</sup> *Id.*, p. 13, Fn. 44.

<sup>6</sup> *In the Matter of The Empire District Gas Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company*, Case No. GR-2009-0434, Concurring Opinion of Chairman Robert M. Clayton III, February 24, 2010, p.1.

<sup>7</sup> Based on UE’s 2008 gas revenues of \$166,693,424.

2010. A November resolution will also give sufficient time for UE to file any necessary tariff changes to become effective by January 1, 2011 for the 2011 energy efficiency rebates. 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 was not aware of UE's unilateral program decision to stop accepting new residential rebate application until October 18, 2010, and filed this motion for expedited consideration as soon it could have.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission act expeditiously to resolve these issues involving UE's energy efficiency rebate program for 2010 and 2011 where consensus could not be reached among members of the RCEEC.

Respectfully submitted,

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 the following this 1<sup>st</sup> day of November 2010:

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**/s/ Marc Poston**

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