

**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	)	File No. GT-2011-0410
Energy Efficient Natural Gas Equipment and Building	)	Tariff No. JG-2011-0620
Shell Measure Rebate Program.	)	

**POST-HEARING BRIEF OF AMEREN MISSOURI**

**Wendy K. Tatro**, # 60261  
Associate General Counsel  
**Thomas M. Byrne**, #33340  
Managing Associate General Counsel  
Ameren Services Company  
P.O. Box 66149, MC 1310  
St. Louis, MO 63166-6149  
(314) 554-3484 (phone)  
(314) 554-2514  
(314) 554-4014 (fax)  
AmerenMOService@ameren.com

**Attorneys for Union Electric Company, d/b/a Ameren Missouri**

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**I.     INTRODUCTION**

This case is somewhat unique as compared to most that come before the Missouri Public Service Commission (Commission), in that the dispute centers on what standard should be used to inform future action rather than determining whether a prior action was prudent. Accordingly, the Commission's order in this case will set the direction for future actions of Ameren Missouri in its natural gas energy efficiency program.

Ameren Missouri's natural gas energy efficiency efforts have undergone great change over the years, but most dramatically as a result of the Stipulation and Agreement which resolved the Company's last natural gas rate case, Case No. GR-2010-0363 (Stipulation). A portion of the Stipulation dealt with the Company's energy efficiency programs and represents an important milestone in the growth of the Company's natural gas energy efficiency programs. As part of the Stipulation, the Company substantially increased its expenditures on energy efficiency, from \$363,000 per year to \$700,000, with a target of reaching 0.5% of the Company's gross revenues (\$850,000) within three years.<sup>1</sup> The energy efficiency stakeholder group was changed from a Consensus group, where all parties had to agree upon changes, to an Advisory group named the Energy Efficiency Advisory Group (EEAG), where Ameren Missouri is solely responsible for all

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<sup>1</sup> GR-2010-0363, Stipulation and Agreement, ¶ 2 and ¶ 6A.

decisions associated with its energy efficiency programs.<sup>2</sup> Importantly, cost effectiveness went from “a consideration”<sup>3</sup> to a requirement for Ameren Missouri to operate its programs prudently.<sup>4</sup> All of these changes are significant and represent important steps in the maturation of the Company’s natural gas energy efficiency efforts. This case is part of Ameren Missouri’s effort to fulfill the obligations that come along with that maturation – the requirement, from both the Stipulation and from prudent operation of its programs, to ensure it offers energy efficiency programs which are beneficial to both the Company and its customers.

The majority of the arguments lodged by other parties in this case stem from interpretations of the Stipulation from the Company’s last rate case. For the most part, the Commission need go no further than the four corners of the Stipulation, as the language of the document is clear without reference to any extrinsic evidence. Ameren Missouri’s actions are within the terms of the Stipulation and the Commission should allow the revised tariffs to take effect.

## **II. COST-EFFECTIVE**

The largest issue in this case is the meaning of the term “cost-effective” as it is used in the Stipulation. No one disputes that the Stipulation requires the Company to operate cost-effective energy efficiency programs or that the requirement appears multiple times within the Stipulation.<sup>5</sup> This term, however, is not defined within the Stipulation and is the only portion of the Stipulation which may require reference to external sources in order to determine its meaning.

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<sup>2</sup> Id., ¶ 6D.

<sup>3</sup> Ex. MDNR 1 (Buchanan rebuttal), p. 5, l. 18-21.

<sup>4</sup> GR-2010-0363, Stipulation and Agreement, ¶ 6B and ¶ 6F.

<sup>5</sup> Id., ¶ 6B and ¶ 6F.

This lack of a definition should not be a concern, as the Company has experience operating cost-effective energy efficiency programs in its electric business, meaning programs that are beneficial to the Company and its customers. The cost/benefit test which best captures this is the Total Resource Cost test (TRC).<sup>6</sup>

This standard, however, is not the standard proposed by the other parties in this case to be used for Ameren Missouri's natural gas energy efficiency programs. The other parties point to the Commission's rules governing Promotional Practices and to the definition of cost-effective found within those rules. That definition reads, "Cost-effective means that the present value of life-cycle benefits is greater than the present value of life-cycle costs to the provider of an energy service."<sup>7</sup> The other parties in this case read no further into this rule than this definition and assert that it means that the Company's reliance upon the TRC is misplaced. Ameren Missouri disagrees with this approach and believes one must look at the rest of the Commission's rule, as is discussed below. However, if the Commission determines that Staff and others are correct and that the only considerations are those listed in the definition from its Promotional Practices rule, then the Company will manage its natural gas energy efficiency programs accordingly.

The largest concern the Company has with the standard proposed by Staff and others in this case is that their cost-effectiveness test does not ensure programs are beneficial to all utility customers and, instead, only looks at the costs and benefits to the utility. In other words, there is no assurance that the programs produce benefits that outweigh their total cost to customers. We believe the Commission will share this

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<sup>6</sup> Ex. Ameren Missouri 4 (Shoff surrebuttal), p. 3, l. 11-12.

<sup>7</sup> 4 CSR 240-14.010(6)(D).

concern and do not believe this Commission ever intended to ignore the costs paid by participant and non-participant customers.

Staff agrees that the cost-benefit test which best captures the Promotional Practices definition of cost-effective is the Utility Cost Test (UCT).<sup>8</sup> Staff also admits that the Promotional Practices definition “does not take into account participant cost”<sup>9</sup> and instead focuses only upon the costs and benefits to the utility.<sup>10</sup> This is consistent with the concern raised by the Company in Ameren Missouri witness Kyle Shoff’s surrebuttal testimony, “...by using the UCT to calculate cost-effectiveness, the costs associated with the participant purchasing the measure are excluded and the overall cost of the energy efficient resource is understated.”<sup>11</sup>

The limitations of the UCT test are important. Beyond those cited above, the UCT is not consistent with the requirements of the Commission’s Promotional Practices rules itself. The rule requires, “All promotional practices of a public utility or its affiliate shall be just and reasonable as a business practice, economically feasible and compensatory and *reasonably calculated to benefit both the utility and its customers.*” (emphasis added.)<sup>12</sup> The test that best captures this requirement is the TRC, which is the test Ameren Missouri relied upon when filing to change its natural gas energy efficiency measures.<sup>13</sup>

The TRC is widely used, by both electric and natural gas utilities, as the primary test to determine cost-effectiveness of energy efficiency programs.<sup>14</sup> There is evidence

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<sup>8</sup> Tr. p. 276, l. 25 through p. 277, l. 5.

<sup>9</sup> Tr. p. 275, l. 20-23.

<sup>10</sup> Tr. p. 275, l. 15-17.

<sup>11</sup> Ex. Ameren Missouri 4, p. 10, l. 6-9.

<sup>12</sup> 4 CSR 240-14.030(1).

<sup>13</sup> Ex. Ameren Missouri 3 (Shoff direct), p. 2, l. 13-22.

<sup>14</sup> Ex. Ameren Missouri 4, p. 6, l. 1-15.

that other tests are used along with the TRC, but the TRC is the most common measurement of energy efficiency cost-effectiveness, as indicated by the National Action Plan for Energy Efficiency.<sup>15</sup> Additionally, this Commission has explicit rules governing electric energy efficiency programs which require the use of the TRC test, in both its Integrated Resource Planning rules and its Demand Side Management rules. Staff admits that the TRC and the UCT do not incorporate the same costs,<sup>16</sup> but argues that natural gas and electric utilities are different and should use different cost-benefit tests.<sup>17</sup> Once on the witness stand, however, Staff witness Michael Stahlman could not explain the rationale behind his assertion.<sup>18</sup> In fact, the record is devoid of any substantive explanation as to why the TRC would not be an appropriate cost-benefit test for natural gas energy efficiency programs. This is further supported by statements made by the Missouri Department of Natural Resources (DNR) and the Office of Public Counsel (OPC). DNR witness John Buchanan testified, “MDNR agrees that the TRC is the primary method to determine the cost effectiveness or benefit/cost score for energy efficiency at the program level.”<sup>19</sup> OPC witness Ryan Kind, although pointing to the Commission’s definition in its Promotional Practices rules in his testimony, also admitted, “Cost-effectiveness evaluation should rely primarily on the total resource cost (TRC) test.”<sup>20</sup>

Ameren Missouri has demonstrated that the TRC results for the measures it is proposing to remove are below one and that the TRC value for its residential program is

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<sup>15</sup> Id.

<sup>16</sup> Tr. p. 284, l. 12-14.

<sup>17</sup> Ex. MPSC 1 (Stahlman rebuttal), p. 12, l. 16-19.

<sup>18</sup> Tr. p. 282, l. 13-17.

<sup>19</sup> Ex. MDNR 1, p. 21, l. 8-9.

<sup>20</sup> Ex. Ameren Missouri 4, Schedule KFS1, OPC answer to data request Ameren-OPC 003.

also below one. Reviewing those values, Mr. Shoff calculated a TRC result for the residential program level of 0.72<sup>21</sup> and, at the measure level, TRCs ranging from 0.03 to 0.86.<sup>22</sup> Of course, it takes a result of one or above to indicate a program or measure is cost-effective. The record is clear, these measures (and the residential program overall) are not cost-effective when the cost to customers is included. Removal of these measures is required in order to meet the requirements of the Commission's Promotional Practices rule, which require a benefit to both the utility and its customers, as well as necessary to ensure the Company is offering cost-effective programs to its customers as required by the Stipulation and by prudent management practices.

In addition, the Company would point out that no party, not Staff, OPC or DNR, placed any cost-benefit results into the record – not a TRC result, not a UTC result, and not a result from any of the other cost-benefit tests which could be calculated. Even if the Commission's Promotional Practices rule stopped at the definition section and the Commission relied only upon UCT results, the record is devoid of evidence to show that the measures Ameren Missouri proposes to remove are cost-effective under the UCT. The adverse parties have failed to provide a basis upon which the Commission can rely to order the Company to retain all measures within its natural gas energy efficiency programs.

Staff and others point to the Company's use of an auditor to determine if a particular measure should be implemented in a particular customer's home as proof that that measure is cost-effective. This argument has no bearing on program cost-effectiveness and should be rejected. An auditor uses a completely different method to

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<sup>21</sup> Ex. Ameren Missouri 4, p. 8.

<sup>22</sup> Ex. Ameren Missouri 3, p. 4.



calculate cost-effectiveness. The auditor is looking at a single home and uses the retail rate to estimate the economic payback of a measure without any consideration of utility program costs.<sup>23</sup> Mr. Stahlman's testimony on the stand is illustrative.

Q. The auditor, when they're determining – they do an audit and they say this measure would be cost-effective for you, customer, to implement. Correct?

A. Yes.

Q. And when they say it's cost-effective, what are they looking at?

A. They were looking at the values, the benefit to that participant versus the cost that you will have to expend.

Q. So if I spend \$500 on this measure, will I experience enough energy efficiency savings to pay back over some particular point in time? Is that a fair description?

A. That's what we hope, yes.

Q. He doesn't look at the – or she doesn't look at the costs, the program costs that are paid by the rest of the customers; is that correct?

A. Yes that's correct, he does not.

Q. So if an auditor recommends a measure, does that mean it's cost-effective under the Commission's promotional practices rule definition?

A. Not necessary[il]y.

Q. Does that mean it's cost-effective using the TRC calculation?

A. Not necessarily.<sup>24</sup>

Another concern discussed at the hearing was identifying the sources from which Ameren Missouri obtained information for its TRC calculations and discussion of whether those sources provide a credible basis for the Company's TRC results. While on the stand, Mr. Shoff pointed out that the Company used Missouri specific weather,<sup>25</sup> Missouri specific building vintages,<sup>26</sup> and Missouri specific heating and cooling

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<sup>23</sup> Ex. Ameren Missouri 4, p. 4, l. 3-12.

<sup>24</sup> Tr. p. 279, l. 8 though p. 280, l. 7.

<sup>25</sup> Tr, p. 208, l. 8-9.

<sup>26</sup> Tr. p. 208, l. 9-10.

systems.<sup>27</sup> The non-Missouri specific data included inputs such as measure costs and non-weather-sensitive energy savings.<sup>28</sup> All of this information is modeled by the Company in the same way that the post-implementation evaluator will model this information and using similar sources and methodologies.<sup>29</sup> Further, Mr. Shoff testified that he did not expect that the evaluation, which would provide additional Missouri specific data, would result in a measure that currently shows a TRC result of .06 to suddenly become cost-effective.<sup>30</sup> The Company is seeking to remove measures that have TRC results significantly below one, meaning they are far from cost-effective and should be removed from the Company's energy efficiency programs.

### **III. POST-IMPLEMENTATION EVALUATION**

Several parties have made the argument that because the Company has not completed its first post-implementation evaluation, the Stipulation prohibits the Company from modifying its energy efficiency programs. A post-implementation evaluation is required by the Stipulation and the Stipulation sets out several requirements for that evaluation.<sup>31</sup> Ameren Missouri does not allege that it has completed the required post-implementation evaluation nor does it dispute that it is required to have a post-implementation evaluation completed no later than December 31, 2012.<sup>32</sup>

The Company does not believe it is required to complete the post-implementation evaluation prior to making changes to its natural gas energy efficiency programs. First, the plain language of the Stipulation does not contain this requirement. The evaluation

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<sup>27</sup> Tr. p. 208, l. 13-14.

<sup>28</sup> Tr. p. 201, l. 8-9.

<sup>29</sup> Tr. p. 237, l. 10 through p. 238, l. 10.

<sup>30</sup> Tr. p. 238, l. 19-21.

<sup>31</sup> GR-2010-0363, Stipulation and Agreement, ¶ 6C.

<sup>32</sup> Id.

paragraph, found at paragraph 6C, contains no such restriction and another paragraph, paragraph 6G, explicitly allows the Company to file revised tariff sheets as “circumstances warrant.” To accept the argument that the post-implementation evaluation must be completed prior to making program changes would require the Commission to add words to paragraph 6C and ignore language found in paragraph 6G.

Secondly, as Ameren Missouri witness Greg Lovett testified, the Company will evaluate all measures which were installed by customers (through April 2012), whether or not those measures are removed from the Company’s tariffs in this proceeding.<sup>33</sup> The evaluation results will inform and shape the Company’s future natural gas energy efficiency programs, but, as Staff witness Dr. Henry Warren admitted at hearing, the post-implementation evaluation requirement does not relieve the Company from its obligation to act prudently during the time prior to the completion of that evaluation.<sup>34</sup> The Company is seeking to remove measures which it believes are not cost-effective, a course of action it considers prudent.

#### **IV. PROGRAM INTERRUPTION**

Several parties point to language in the Stipulation which requires the Company to continue offering its energy efficiency programs uninterrupted. The language states, “Such tariffs shall provide for uninterrupted availability of these energy efficiency programs through December 31 2012.”<sup>35</sup> Ameren Missouri is in compliance with this requirement. The Company agreed that it would not cease offering its residential and business energy efficiency programs, as the Company had done in the fall of 2010. However, the very next sentence in the Stipulation provides the Company with the ability

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<sup>33</sup> Ex. Ameren Missouri 2 (Lovett surrebuttal), p. 6, l. 19 through p. 7, l. 1.

<sup>34</sup> Tr. p. 294, l.17-21.

<sup>35</sup> GR-2010-0363, Stipulation and Agreement, ¶ 6 G.

to modify its programs, by allowing the Company to file "...proposed revised tariff sheets concerning the Energy Efficiency programs, if Ameren Missouri believes circumstances warrant changes."<sup>36</sup> This language does not say changes cannot occur until after the post-implementation evaluation is complete, a fact Mr. Stahlman admitted at the hearing.<sup>37</sup> Instead, it anticipates that changes will be filed. The Company is not proposing to eliminate either its residential or business programs. It is modifying the content of those programs by adjusting the measures offered within those programs, an action which the language of the Stipulation allows. In the near future, additional tariff modifications may be filed in order to add new measures, but that cannot happen until this case has been resolved.

In this case, the Company believes that circumstances warrant the changes it has proposed. The Company had last calculated TRC results in the summer of 2010. After receiving some new information from Ameren Illinois' programs and updates from other data sources, the Company reran its TRC calculations and, for some measures, calculated TRCs for the first time. The results of both the summer of 2010 calculations and the spring of 2011 calculations can be found on Exhibit Commission 1. As can be seen on the exhibit, 13 of the measures the Company is proposing to remove did not have TRC calculations until the spring of 2011 or a TRC had only been calculated as a blend of several measures rather than on its own. As a consequence, the calculations done in the spring of 2011 were the first ones to show that those measures were not cost-effective. Additionally, the TRC of some measures fell even further below the minimum of one. Faced with these facts, the Company felt it had an obligation to take action to remove

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<sup>36</sup> GR-2010-0363, Stipulation and Agreement, ¶ 6G.

<sup>37</sup> Tr. p. 266, l. 15-20.

these measures from its energy efficiency programs. Ameren Missouri believes these developments satisfy the Stipulation language that allows it to file to modify programs because the “circumstances warrant changes.”

Other parties in this case have taken the position that the Company had no obligation to review cost effectiveness in the time between when the programs were approved by the Commission and until after the post-implementation evaluation is complete.<sup>38</sup> This position is surprising to the Company. While the Company certainly does not believe cost-effectiveness must be revisited every day, when circumstances change, it is good business practice to revisit cost-effectiveness – which is exactly what Ameren Missouri did in this case. The Stipulation limits the Company to prudently incurred expenses.<sup>39</sup> The Company believes its actions to remove measures which it now has reason to believe are not cost-effective is consistent with this requirement.

## **V. FUNDING LEVELS**

Mr. Stahlman asserted in its prefiled testimony that the Company would not spend the \$700,000 that was included in its revenue requirement for its energy efficiency programs.<sup>40</sup> The Company disagrees with Mr. Stahlman’s conclusions. Of that \$700,000, \$263,000 was given to DNR as part of a low-income weatherization program; \$50,000 has been reserved to fund for the required post-implementation evaluation, leaving \$387,000 to be spent on energy efficiency programs.<sup>41</sup> As of the end of August, the Company had spent or was committed to spending (through customer reservations)

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<sup>38</sup> Tr. p. 270, l. 8-14.

<sup>39</sup> GR-2010-0363, Stipulation and Agreement, ¶ 6B and ¶ 6 F.

<sup>40</sup> Ex MPSC 1, p. 15, l. 2 through p. 16, l. 2.

<sup>41</sup> Ex. Ameren Missouri 2, p. 10, l. 16-23.

approximately half of the \$387,000.<sup>42</sup> Mr. Lovett testified at the hearing that he is confident the Company will be able to reach the \$700,000 level.<sup>43</sup> This effort may require measures to be added to its programs, which Ameren Missouri supports doing, but that cannot happen until such time as this case has been resolved. Finally, if the Company does not spend the entire \$700,000, the Stipulation already sets forth how that occurrence would be addressed. A regulatory liability is set up, thus ensuring customers are not harmed by that development. Staff and the Company agree on the importance of this fact. When asked what was more important, ensuring Ameren Missouri spends \$700,000 or ensuring the Company's expenditures are made on cost-effective programs, Mr. Stahlman responded, "I would say that it's ensuring that it's on cost-effective programs..."<sup>44</sup>

## **VI. OTHER CONCERNS**

Other objections raised in response to Ameren Missouri's request to remove non cost-effective measures include a statement from DNR about the changes seeming to "run contrary to the terms of an ENERGY STAR® Partner."<sup>45</sup> No further explanation of what this statement means was offered. On cross examination, Mr. Buchanan admitted that he was not alleging Ameren Missouri had violated the agreement<sup>46</sup> and that the ENERGY STAR agreement does not require the Company to promote any particular number of ENERGY STAR products.<sup>47</sup> Mr. Buchanan's assertion is not explained or supported by evidence and should be ignored by the Commission in this proceeding.

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<sup>42</sup> Ex. Ameren Missouri 2, p. 11, l. 10-13.

<sup>43</sup> Tr. p. 146, l. 6-10.

<sup>44</sup> Tr. p. 282, l. 2-3.

<sup>45</sup> Ex. MDNR 1, p. 18, l. 20-23.

<sup>46</sup> Tr. p. 246, l. 15-17.

<sup>47</sup> Tr. p. 246, l. 21 through p.247, l. 4.

Finally, parties allege that Ameren Missouri failed to circulate tariff sheets prior to filing, in violation of the Stipulation.<sup>48</sup> As Mr. Lovett testified, versions of this tariff were circulated multiple times, at least one meeting was held to discuss the revisions, a webinar was held to discuss the TRC calculations and an email went out which explained that two additional measures would be removed from the tariff.<sup>49</sup> The argument that the Company didn't circulate the tariff relies upon a hyper-technical interpretation which serves little purpose. The other parties in this case had multiple opportunities to comment upon this tariff revision and were informed of what changes Ameren Missouri was filing to make to its energy efficiency programs and the reasons behind those changes well in advance of the filing. This allegation should be rejected by the Commission.

Respectfully submitted,

UNION ELECTRIC COMPANY,  
d/b/a Ameren Missouri

/s/ Wendy K. Tatro

**Wendy K. Tatro**, # 60261  
Associate General Counsel  
**Thomas M. Byrne**, #33340  
Managing Associate General Counsel  
Ameren Services Company  
P.O. Box 66149, MC 1310  
St. Louis, MO 63166-6149  
(314) 554-3484 (phone)  
(314) 554-2514  
(314) 554-4014 (fax)  
AmerenMOService@ameren.com

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<sup>48</sup> GR-2010-0363, Stipulation and Agreement, ¶ 6G.

<sup>49</sup> Ex Ameren Missouri 2, p. 12, l. 11 through p. 13, l. 5.

## **CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record this 20<sup>th</sup> day of October, 2011.

General Counsel's Office  
Lera Shemwell  
Missouri Public Service Commission  
P.O. Box 360  
200 Madison Street, Suite 800  
Jefferson City, Missouri 65102  
gencounsel@psc.mo.gov  
lera.shemwell@psc.mo.gov

Office of the Public Counsel  
Marc Poston  
Deputy Public Counsel  
P.O. Box 2230  
200 Madison Street, Suite 650  
Jefferson City, MO 65102-2230  
opcservice@ded.mo.gov  
marc.poston@ded.mo.gov

Sarah Mangelsdorf  
Missouri Department of Natural Resources  
P.O. Box 899  
207 West High St.  
Jefferson City, MO 65102  
Sarah.mangelsdorf@ago.mo.gov

Mary Ann Young  
Missouri Department of Natural Resources  
1101 Riverside Drive,  
4<sup>th</sup> Floor East, Rm. 456  
Lewis & Clark State Office Building, 4E  
Jefferson City, MO 65109-0176  
Maryann.young@dnr.mo.gov

/s/ Wendy K. Tatro

Wendy K. Tatro