

**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.)	

RESPONSE OF AMEREN MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company), and in response to motions filed by the Staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel (OPC) and the Missouri Department of Natural Resources (MDNR), states as follows:

I. OVERVIEW

1. Ameren Missouri has funded natural gas energy efficiency programs for many years now, but has recently implemented a significant change in how decisions are made for these programs. This change is tied to the Unanimous Stipulation and Agreement (Stipulation) which was entered into and approved by the Missouri Public Service Commission (Commission) in the Company's last natural gas rate case, Case No. GR-2010-0363. The Stipulation requires that Ameren Missouri not only increase its investment in energy efficiency, but also requires that the increased investment be cost-effective.

2. This filing is the first step in Ameren Missouri's effort to meet that obligation. The Stipulation requires the Company to apply a more rigorous standard for determining which energy efficiency measures are cost-effective and to identify energy efficiency measures which are not. The tariff filing before the Commission has been made for the purpose of complying with the Stipulation's provisions. Specifically, it

seeks to modify the existing tariff by removing non cost-effective energy efficiency measures so that Ameren Missouri can concentrate its efforts and energy efficiency expenditures on the measures which provide the greatest benefit to its customers. Investing in those energy efficiency measures which are cost-effective is not only required by the Stipulation, but it is the prudent course of action. It is the Company's belief that such action is exactly what the Commission expects from Ameren Missouri as it manages its energy efficiency programs going forward.

3. The table below, which was provided to the Energy Efficiency Advisory Group (EEAG) members prior to the Company filing to change its tariff, lists each measure which Ameren Missouri proposes to remove from its natural gas energy efficiency programs and sets forth the total resource cost (TRC) result for each. As the Commission is aware, the TRC is an analytic method widely used across the nation to determine the cost-effectiveness of an energy efficiency measure. A TRC of less than one indicates that the measure is not cost-effective. As the table below demonstrates, none of the measures Ameren Missouri seeks to remove are cost-effective.

TRC	Residential Measures
0.06	Average Wall Insulation R-11 to R-13
0.09	Energy Star Door
0.11	New Ceiling Insulation R-38 to R-50
0.13	New Wall Insulation R-19 + R-5 Sheathing
0.14	Wall Insulation
0.29	Tankless Water Heater - 0.82
0.32	Door Weather Stripping
0.41	Window Replacement
0.52	Old Ceiling Insulation R-11 to R-30
0.53	Old Wall Insulation R-0 to R-11
0.56	Ceiling Insulation
0.64	Average Ceiling Insulation R-19 to R-30
0.86	Tank Storage Water Heater - Tier II 0.67 EF

TRC	General Service Measures
0.03	Window Replacement
0.10	Energy Star Door
0.11	Boiler Tune-up
0.15	Griddles – Gas
0.49	Modulating Burner
0.82	Food Service Oven
0.82	Ceiling Insulation

II. TERMINOLOGY

4. The motions filed by Staff, OPC and DNR (collectively, the Motions) use the terms “program” and “measure” interchangeably. This may have contributed to at least a portion of the concerns raised in this case. A program is a bundled group of multiple energy efficiency measures. The two terms cannot be used interchangeably, as was done at several points within the Motions. Ameren Missouri has two natural gas energy efficiency programs – an Equipment and Building Shell Measure Rebate Program for Residential customers and an Equipment and Building Shell Measure Rebate Program for General Service customers.¹ Within each program, the tariff sheets list various measures. Sheet Nos. 80 and 81 list Residential measures, while Sheet Nos. 82 through 85 list General Service measures.

5. It appears to Ameren Missouri that the Motions ignored this distinction, causing a misunderstanding about what the Company is or is not obligated to do and which contributed to several of the objections lodged by Staff, OPC and MDNR. When one views the requirements of the Stipulation with the correct understanding of the terms program and measure, it becomes clear that Ameren Missouri has properly fulfilled its

¹ Ameren Missouri’s natural gas tariffs have three primary customer classes: Residential, General Service and Transport.

obligations under the Stipulation. The Company will address this confusion as it addresses each objection below.

III. OBJECTIONS BASED UPON LANGUAGE OF THE RATE CASE STIPULATION AND AGREEMENT

6. The Motions set forth several objections to Ameren Missouri's proposed tariff changes, many of which are rooted in the language of the Stipulation. A complete copy of the Stipulation is attached as Exhibit 1 to this pleading and the sections relevant to this discussion can be found on pages three through five.

Circumstance Warranting Tariff Change

7. The Stipulation states, "The Parties agree that Ameren Missouri may file with the Commission proposed revised tariff sheets concerning the Energy Efficiency programs, if Ameren Missouri believes circumstances warrant changes."² While Staff admits that the Stipulation allows for Ameren Missouri to propose changes, they assert there has not been a change that warrants modification of the tariff. Simply put, the change that warrants modification of the tariff is the identification by Ameren Missouri of measures that the TRC test demonstrates are not cost-effective.

8. To understand why the Stipulation contemplates that Ameren Missouri will make tariff filings such as this one when *the Company* believes the circumstances warrant a change requires an understanding of how the Company's current natural gas energy efficiency tariffs were developed. Prior to the Stipulation, the stakeholder group operated as a "Collaborative," which meant that there had to be a consensus among all Collaborative members regarding details of the Company's natural gas energy efficiency programs. The Collaborative did not rely upon a TRC analysis to determine which

² Case No. GR-2010-0363, Unanimous Stipulation and Agreement, p. 5, ¶ 6G.

measures should be adopted. Rather, the Collaborative members relied upon their own experience and knowledge in making those decisions.

9. As a result of the Stipulation, this Collaborative was transformed into the EEAG. The Stipulation does not require the EEAG to reach consensus. Rather, the Stipulation specifies that Ameren Missouri is solely responsible for all decisions regarding its natural gas energy efficiency programs.³ Further, as mentioned previously, the Stipulation requires that the Company fund only “cost-effective programs”⁴ and specifies that participation in the EEAG does not affect a party’s right to question the prudence of planning or implementation decisions in future rate cases.⁵

10. As long as the stakeholder group was structured as a Collaborative (requiring consensus), all parties had to agree upon the actions taken regarding the Company’s energy efficiency programs and measures prior to it being taken. This avoided potential after-the-fact arguments about whether it was prudent to implement a specific measure. However, the EEAG is only advisory in nature. The Stipulation places the decision-making authority and responsibility in Ameren Missouri’s hands alone. As noted, parties in a future rate case can challenge the prudence of the Company’s decisions, as is the case. The Company must act accordingly.

11. Ameren Missouri takes the requirements of the Stipulation and the change in the role of the stakeholder group seriously and has acted (by filing this revised tariff) to ensure that only cost-effective energy efficiency measures are offered to its customers. In order to accomplish this objective and as part of its prudent planning, the Company completed cost-effectiveness screening of each measure in its natural gas energy

³ Id., p. 4, ¶ 6D.

⁴ Id., p. 3, ¶ 6B.

⁵ Id., p. 3, ¶ 6D.

efficiency programs.⁶ The cost effectiveness screening methodology of natural gas end use measures is identical to the cost-effectiveness methodology of electric end use measures as required in the Commission's Integrated Resource Planning Rules. See 4 CSR 240-22.050(3)(E). *"Annualized benefits minus annualized costs per installation must be positive or the ratio of annualized benefits to annualized costs must be greater than one (1) for an end-use measure to pass the screening test."* The ratio of annualized benefits to annualized costs is based on the TRC. As the table shows, the TRC benefit/cost analysis of each measure in the Residential and General Service classes showed that certain measures were not cost-effective because they did not have a TRC of one or above. To be clear, the TRC test compares the benefits realized by installing a measure with the costs to install that measure. Benefits are calculated as the product of the measure's estimated energy savings and the utility's avoided costs. Costs are equal to the incremental capital, installation and operating and maintenance costs. This test is used widely throughout the energy efficiency industry as a way to determine whether a measure is cost-effective.⁷ If the Company did not seek to remove the measures which do not produce a TRC of one or above, it would expose the Company to very real risk that one or more of the parties to the Stipulation might claim that the Company has failed to comply with its obligations thereunder. Moreover, one or more parties to a future rate case might claim that the Company was imprudent for not complying with the Stipulation and, based upon that allegation, might request that the Commission find that such imprudence caused harm to customers equal to the program costs that, according to the

⁶ Ameren Missouri determined there did not exist sufficient publicly available data to inform a TRC analysis on the air damper measure and so did not calculate a TCR for that measure.

⁷ Unlike on the electric side, Ameren Missouri's natural gas utility has a rate design which does not penalize the Company for promoting energy efficiency measures, so there is little throughput disincentive.

TRC results, are not cost-effective. In this filing, Ameren Missouri has chosen to limit its energy efficiency measures to those that are cost-effective, which it believes to be the prudent course of action.

Uninterrupted Program Availability

12. Staff next alleges the proposed tariffs violate the portion of the Stipulation in which Ameren Missouri committed to providing continuous energy efficiency programs. The Rate Case Stipulation reads, “Such tariffs shall provide for uninterrupted availability of these energy efficiency *programs* through December 31 2012.”⁸ Here, the distinction between the terms “program” and “measure” is important. The Stipulation uses the term program and does not mention measures. While it is true that the Company must offer uninterrupted availability of its Residential *program* and of its General Service *program*, there is no requirement that it must offer uninterrupted availability of each individual measure within those programs. Not only does the plain meaning of the Stipulation require only that the programs be uninterrupted, but an interpretation of the Stipulation that does not allow for changes to measures that are not cost-effective is contrary to the specific language of the Stipulation and denies Ameren Missouri the ability to effectively manage its energy efficiency investment.

13. Even with the tariff changes being proposed, Ameren Missouri is offering robust Residential and General Service energy efficiency programs. There are still 12 measures in the Residential Program and 30 measures in the General Service Program. The availability of the Company’s programs will not be interrupted; it is only the scope of measures within each program which has been adjusted.

⁸ Case No. GR-2010-0363, Unanimous Stipulation and Agreement, p. 5, ¶ 6G. Emphasis added.

Funding Obligation

14. Staff next asserts that because the Company is not adding replacement measures, it will not meet the funding obligation set forth in the Stipulation. (Here, Staff does use the term measures appropriately.) Staff further claims that removing these measures is inconsistent with Ameren Missouri's obligation to "ramp up" spending as set forth in the Stipulation. MDNR makes the same assertion.

15. The Stipulation sets a target level of annual funding to be achieved within three years, ramping up by year three to approximately \$850,000 "for expenditures *prudently* incurred on *cost-effective* programs."⁹ The Staff's and MDNR's claims are not consistent with the language of the Stipulation for several reasons.

16. First, neither Staff nor MDNR offer any basis for the assertion that the removal of these measures will mean that the Company is unable to meet this target. Secondly, the very section of the Stipulation referenced by Staff and MDNR clearly indicates these expenditures must be prudent and must be incurred for cost-effective programs. Ameren Missouri's proposed tariff changes are designed to allow the Company to invest in the cost-effective measures rather than on measures which are not cost-effective. Finally, Ameren Missouri is working to meet the *targeted* expenditure level, but it certainly makes no sense to achieve it by investing in measures which are not cost-effective in the first place.

Evaluation Requirement

17. Staff and OPC both argue that the tariff change violates the evaluation requirement of the Stipulation, stating that one cannot evaluate a measure that is not in

⁹ *Id.*, p. 3, ¶ 6B. Emphasis added.

place. Both go so far as to assert that it is unreasonable to make any change to a measure prior to receiving a completed evaluation.

18. The relevant portion of the Stipulation states, “The Company shall perform a post-implementation evaluation of the effectiveness of its non low income weatherization energy efficiency programs.” Although a later section refers to evaluating both measures and programs, the Stipulation does not contain any restriction preventing modification of the measures or of any other portion of the tariff, prior to the completion of the evaluation.

19. Additionally, the underlying argument that one cannot evaluate a measure that is not in place is untrue. This proposed tariff revision does not relieve Ameren Missouri of the responsibility to evaluate any measure that was implemented. Accordingly, the evaluation will include all measures that have been installed since the February 20th effective date of the Stipulation, even if some of those measures were eliminated prior to the time of the evaluation.

Circulation of Proposed Tariff

20. The Stipulation contains a requirement that, “Prior to filing any such proposed revised tariff sheets with the Commission, Ameren Missouri shall circulate those sheets for review and comment by the EEAG.”¹⁰ Staff and OPC allege that Ameren Missouri failed to comply with this provision.

21. The facts demonstrate that the Company in fact did “circulate those sheets for review and comment by the EEAG.” On April 19th, Ameren Missouri sent the EEAG a red-lined draft of the revised tariff, the TRCs, and the TRC workpapers.¹¹ On April

¹⁰ Id., p. 5, ¶ 6G.

¹¹ All dates occurred in calendar year 2011 unless otherwise indicated.

25th, the EEAG had a meeting to discuss these documents. During the meeting, the Company agreed to provide certain supplemental information, which was supplied to the EEAG on May 13th. Along with that supplemental information, the Company sent out another set of revised tariff sheets and asked for comments. Ameren Missouri also offered to work with any party who had questions about how the TRCs were calculated. Staff requested that follow up and a webinar was held with Staff on May 24th. On May 27th, Ameren Missouri filed the tariff sheets it had circulated on May 13th. Then, after further consideration of the EEAG comments, Ameren Missouri decided to make another revision to the tariffs in order to remove two additional non cost-effective measures that it had previously not identified.¹² On June 8th, prior to the revised tariffs being filed, Ameren Missouri emailed the EEAG and indicated that because of the input received it would be withdrawing the previous tariff filing and would then file a revised tariff which would remove two additional measures. The revised tariff was then filed.

22. The obvious purpose of this requirement in the Stipulation is to prevent the Company from filing a tariff revision without a member of the EEAG knowing it was going to be filed and to ensure that the EEAG had an opportunity to comment upon the proposed revisions. Clearly that occurred. The EEAG was sent two versions of the tariff and the final change was only to remove two additional measures with a TRC value of less than one, after having that fact pointed out by a member of the EEAG. The EEAG knew exactly what Ameren Missouri was going to file before it was filed. Accordingly, even if the Commission were to determine that Ameren Missouri committed a technical

¹² 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.

violation of this section of the Stipulation, which the Company does not believe occurred, no member of the EEAG can claim that it was without knowledge that the tariffs were going to be filed nor can a member of the EEAG claim it was denied the opportunity to provide feedback to the Company. The Commission should not reject the proposed tariffs on this basis.

IV. OBJECTIONS BASED UPON TRC ANALYSIS METHODOLOGY

TRC Calculation is Only an Estimate

23. Staff argues that the TRC results calculated by Ameren Missouri are only prospective estimates of the cost-effectiveness of measures and are not based on Missouri specific data, making them an inappropriate basis for excluding measures from a program.

24. Staff is correct that the TRC analysis conducted by Ameren Missouri is a prospective estimate; however, that does not mean it is an uninformed guess or that it cannot be relied upon. Ameren Missouri utilized Morgan Marketing Partners, a firm who has worked with utilities across the nation in developing energy efficiency technology databases, to develop a database for Ameren Missouri. Ameren Missouri utilized multiple representative building types for each rate class, used Missouri specific weather, and used multiple heating and cooling system combinations that are typical within the Company's customer base to calculate the cost-effectiveness of each measure. Further, the use of *ex ante* estimates of energy savings is standard and best practice in the design of energy efficiency programs. Although there may be exceptions, *ex ante* estimates of individual measure energy savings generally are very close to *ex post* actual impact analysis of the same measure savings.

25. Staff's argument that a TRC cannot be calculated until after a program is evaluated, when taken literally, could be used to provide the Company free license to implement any energy efficiency measure it desires, until such time as it has completed an after-the-fact evaluation which shows the measure was not cost-effective. Ameren Missouri does not believe that is how the Commission expects it to administer its energy efficiency investment and, in its efforts to invest prudently in only cost-effective measures, believes it is appropriate to use its initial TRC analysis to remove measures which do not result in a TRC of one or above.

Ameren Illinois TRC Results

26. OPC points to Ameren Illinois' TRC results, many of which are higher than Ameren Missouri's TRC results. OPC's conclusion is that this "proves" Ameren Missouri's results are too low.

27. OPC's argument does not take into account one very important difference, which is the fact that Ameren Illinois' demand-side management programs are a joint electric and natural gas programs. This is important because it means an energy efficiency measure's benefits and costs are allocated to each type of utility (natural gas or electric) based upon the source BTU (British Thermal Unit) savings attributable to the commodity. Ameren Missouri uses a different approach to determining cost-effectiveness for Ameren Missouri. The TRC results should be higher for Ameren Illinois programs and cannot be directly compared to Ameren Missouri's results. Contrary to OPC's assertion, the difference is not an indication that Ameren Missouri's TRC results are wrong, but is merely a reflection of the different circumstances of each utility.

28. It should be noted that none of the parties opposing these tariff changes provided alternative TRC calculations. While one may assert the TRC result should be higher, there is nothing the Commission can rely upon as a basis to believe that any of the measures in question should be at or above a one. Accordingly, there is no basis to believe that any of the measures should be retained in Ameren Missouri's tariffs.

Comparison to Measures in Other Missouri Utilities' Energy Efficiency Programs

29. OPC points out that some of the measures the Company is proposing to remove are included in the natural gas energy efficiency measures of other Missouri utilities. Laclede Gas Company (Laclede) and Atmos Energy Corporation (Atmos) are cited as examples.

30. Ameren Missouri does not know if either Laclede or Atmos has a Collaborative or Advisory stakeholder group, whether either has been told that it must only implement cost-effective programs or if and how those utilities' measure level TRCs were calculated. The mere fact that another utility offers a different program is not a reason to reject Ameren Missouri's revised tariffs. Ameren Missouri is acting in a manner to meet the requirement that it only fund cost-effective energy efficiency measures. That is what the Stipulation requires, and it is also the prudent course of action for it to take.

V. OTHER OBJECTIONS

4 CSR 240-4.020(2) 60 Day Notice

31. OPC asks the Commission to reject Ameren Missouri's proposed tariff because it did not provide a 60 day notice prior to filing the tariffs. OPC says that the

Company should have known there would be opposition to the revised tariff and so the Company knew the filing would be contested.

32. Tariff filings may take effect without the necessity of a hearing. *See* §393.140(11), RSMo. Consequently, a tariff filing does not necessarily lead to a “contested case,” as that term is defined by 4 CSR 240-4.020(1)(C) (which defines contested case by reference to §536.010(4), RSMo.). This is because a contested case is only one where a hearing is required as a matter of law. *See, e.g., President Riverboat Casino Missouri, Inc. v. Missouri Gaming Comm’n*, 304 S.W.3d 291, (Mo. App. W.D. 2010). Consequently, while the Company understood that there might be opposition to the filing, this does not mean that it was “likely” that a contested case, as that phrase is defined by the rule, would in fact exist. Even if the rule somehow applied, 4 CSR 240-4.010(2)(B) allows the Commission to grant a waiver of this section for good cause. There is good cause for such a waiver if the Commission believes one is required. What is and is not good cause lies largely within the discretion of the Commission. *See, e.g., Wilson v. M.E. Morris*, 369 S.W.2d 402, 407 (Mo. 1963). Good cause exists because if the Company’s tariff is rejected and the Company is required to provide a 60 day notice and then refile this tariff, there will be an additional 90 days during which the Company will be operating with a tariff which contains measures which the TRC metric demonstrates are not cost-effective. Such a result flies in the face of the requirements in the Stipulation, and is contrary to common sense. Moreover, there is no harm to waiving this notice requirement. There has been no demonstration that the Commission has somehow been deprived of the ability to properly process or evaluate this filing, nor is there any indication that the parties to this case have suffered any prejudice. For these

reasons, to the extent the Commission believes a waiver is required, Ameren Missouri requests the Commission grant it a waiver of 4 CSR 240-4.020(2).

Rulemaking Suggestion

33. OPC's final recommendation is that the Commission reject Ameren Missouri's tariff changes and instead open a rulemaking proceeding to develop detailed filing requirements for Missouri natural gas energy efficiency filings.

34. Even if the Commission were to decide that a rulemaking is appropriate, it does not follow that Ameren Missouri should not be allowed to modify its natural gas energy efficiency measures until that rulemaking is completed. A rulemaking typically takes almost six months and that timeline only begins after the Commission has sent a proposed rule to the Secretary of State for publication. In this case, the Commission does not even have draft rules with which to begin the formal rulemaking process.

35. Ameren Missouri does not believe a rulemaking is either necessary or appropriate. The rulemaking for electric energy efficiency programs was undertaken in order to implement the Missouri Energy Efficiency Investment Act, which is a law that applies to electric energy efficiency programs only. There is no similar authority which would require a similar rulemaking for natural gas utilities and OPC has not identified any flaw that requires a rulemaking to correct. OPC's suggestion should be rejected and certainly should not be used as a reason to prevent the Company from properly managing its energy efficiency programs or to require the Company to continue promoting measures which are not cost-effective.

36. Finally, in adopting a policy that in effect conditions making changes in gas energy efficiency tariffs upon the completion of a yet-to-be started rulemaking may

itself constitute a statement of general application not found in any Commission rule. Such a policy may therefore be unlawful for having failed to be promulgated via a proper rulemaking conducted under Chapter 536, RSMo.

WHEREFORE, Ameren Missouri requests the Commission allow the tariff sheets take effect at the conclusion of the suspension period and that it be granted a waiver of 4 CSR 240-4.020(2) to the extent the Commission believes a waiver is necessary.

Respectfully submitted,

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d/b/a Ameren Missouri

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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 8th day of July, 2011.

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