

**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-2011-0130
Energy Efficient Natural Gas Equipment and Building) Tariff No. JG-2011-0211
Shell Measure Rebate Program.

**RESPONSE OF AMEREN MISSOURI TO FILINGS
BY THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company), and in accordance with the Missouri Public Service Commission's (Commission) *Order Granting Motion for Extension of Time with Modification (Order)*, states as follows:

1. On November 2, 2011, the Office of the Public Counsel (OPC) filed two motions, one to suspend Ameren Missouri's tariff filing, Public Counsel's *Motion to Suspend Tariff Filing (Motion to Suspend)*, and one to resolve certain issues relating to Ameren Missouri's natural gas energy efficiency programs, Public Counsel's *Motion to Resolve Issues Regarding UE's Energy Efficiency Programs and Motion for Expedited Consideration (Motion to Resolve Issues)*.

2. On the same day, the Commission consolidated the two cases and ordered Ameren Missouri to respond.

PUBLIC COUNSEL'S MOTION TO SUSPEND TARIFF FILING

3. On October 21, 2010, Ameren Missouri filed proposed tariff sheets to modify its natural gas energy efficiency *Equipment and Building Shell Measure Rebate Program*. This is a program that provides rebates for the purchase of certain energy efficiency equipment by residential and commercial customers. Customers first call to

reserve their rebate, next they purchase and install the equipment and finally they submit the claim to redeem the rebate. The response from residential customers has been higher than expected while the response from commercial customers has been lower than expected. The current tariff allocates the funds between residential and commercial customers. The requested tariff change moves funding from General Service rate class to the Residential rate class and adds unspent amounts from the Company's 2009 energy efficiency programs to funding for the Residential class. Ameren Missouri made similar adjustments to its tariff in previous years, as it approaches the end of a program year and sees a need to reallocate funds.

4. OPC's *Motion to Suspend* requests the Commission suspend Ameren Missouri's proposed tariff so that it would not go into effect on November 20, 2010. OPC alleges the suspension is necessary in order to address disagreements within the Collaborative¹ regarding Ameren Missouri's proposed changes. Those disagreements are repeated in OPC's *Motion to Resolve Issues*, the specifics of which are addressed below.

5. Ameren Missouri asks the Commission to deny OPC's *Motion to Suspend*. Without the reallocation of funds provided for in the proposed tariff, Ameren Missouri will be unable to honor some of the rebate reservations it has taken from its residential customers. Additionally, OPC's arguments revolve around whether or not Ameren Missouri should place additional money into the program and criticisms about Ameren Missouri's administration of this program. Allowing the proposed tariff change to become effective does not prevent the Commission from resolving any of those issues nor would it cause any harm to Ameren Missouri's customers.

¹ Collaborative is the signatories to the Stipulation and Agreement from Case No. GR-2007-0003.

6. OPC's *Motion to Suspend* itself states that Ameren Missouri's proposed tariff changes are necessary to "...make it possible for [Ameren Missouri] to provide funds for **existing** residential applications..."² OPC's *Motion to Suspend* goes on to argue for additional funding, but this quoted statement illustrates how a suspension of this proposed tariff change would be harmful to Ameren Missouri's customers. Allowing the tariff change to take effect would allow the Company to pay the rebates which are expected by its customers and does not foreclose OPC's other requested relief, even assuming the Commission finds in OPC's favor on the other issues.

7. OPC's *Motion to Suspend* argues that Ameren Missouri should have allowed the Collaborative to make decisions regarding program implementation, including funding levels and advertising efforts. These issues are repeated within OPC's *Motion to Resolve Issues* and will be addressed in detail below. Regardless, any alleged issue with the Collaborative process or with Ameren Missouri's actions within the Collaborative can be separated from this tariff change and should not be used to impair the Company's ability to pay rebates to its customers who already have made the required rebate reservation and fulfilled the other requirements of the program.

**PUBLIC COUNSEL'S MOTION TO RESOLVE ISSUES
REGARDING UE'S ENERGY EFFICIENCY PROGRAMS
AND MOTION FOR EXPEDITED TREATMENT**

8. In 2007, Ameren Missouri entered into a *Stipulation and Agreement* (*Stipulation*) which resolved, in total, the natural gas rate case which the Company had pending before the Commission. A portion of the *Stipulation* is quoted by OPC's *Motion to Resolve Issues*. The portion cited by OPC states:

² Public Counsel's Motion to Suspend Tariff Filing, p. 2. Emphasis in original.

The Collaborative 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.

The first sentence is instructive; the Collaborative is to determine the details of the programs. That is, the details of the tariffs which set forth what energy efficiency program the Company offers, the rebate level of the programs, which customers may qualify for the program, what percentage will be spent on rebates, etc. The level of funding that Ameren Missouri is willing to commit to this program and the actual implementation of the program, however, is beyond the Collaborative's authority. Ameren Missouri did not seek Collaborative authority before it hired an outside firm to manage the rebate process, nor did OPC bring that decision before the Commission. Ameren Missouri did not seek Collaborative authority before it launched an advertising campaign last spring, nor did OPC bring that decision before the Commission. The *Stipulation* has been in place since March 25, 2007³ and Ameren Missouri has not gone to the Collaborative to seek permission for its implementation efforts. At the same time, Ameren Missouri has kept the Collaborative updated on various decisions as they were made, including providing members of the Collaborative with the details of the advertising campaign concurrent with the campaign being launched. In fact, the Collaborative was aware in early July that the Company was planning to launch a fall advertising campaign. Although OPC apparently believed the Company could not undertake this effort without Collaborative approval, it did not take action to bring the matter before the Commission. Oddly, after actively participating in the Collaborative for several years, OPC now interprets that one sentence in the *Stipulation* (quoted above)

³ Effective date of Order Approving Stipulation and Agreement in Case No. GR-2007-0003.

as giving it veto power over Ameren Missouri's management decisions and over every aspect of the Company's natural gas energy efficiency programs. As will be discussed further below, OPC's interpretation is incorrect, overreaching and should be rejected by this Commission.

9. OPC's first allegation is that Ameren Missouri unilaterally ceased its rebate program. This assertion is untrue. The terms of the tariff itself dictated that outcome. The tariff, as approved by the Commission, states that "The Program will conclude December 31, 2010 or when Program Funds for rebates have been allocated to Participants, whichever occurs first." OPC's misleading statement ignores this clear cut and routine language. At the time Ameren Missouri stopped taking reservations, it had received sufficient reservations for the money earmarked for residential rebates. This was the only action that could be taken under the tariff, given that the funding for the program had been depleted. There was no "decision" to be made nor was there a Collaborative decision to be made.

10. OPC next discusses a marketing campaign which was launched in September and October of 2010. The cost of this program was approximately \$25,000. This campaign, however, was cut short because of the depletion of rebate funds in the program. The decision to launch this campaign was made in late summer, when approximately one half of the rebate funds were still unclaimed. This fact, coupled with the fact that in all the previous years of the program Ameren Missouri had never spent all of the funds allocated to its natural gas energy efficiency programs, led the Company to develop a comprehensive marketing campaign. The campaign was to be launched in the fall, when customers are most likely to replace an inefficient natural gas furnace. The

decision to undertake a marketing campaign is an implementation decision, not a Collaborative decision. However, the Collaborative was told of the Company's intention to undertake this campaign as early as July and was provided with the marketing plan concurrent with its initiation. Despite OPC's current claim that it must approve every decision Ameren Missouri makes with regard to the energy efficiency program, it did not file anything with the Commission to protest this campaign until after the campaign had been concluded.

11. The marketing campaign consisted of outdoor advertisements (in Columbia, Jefferson City and Cape Girardeau), radio spots, bill inserts and an educational webinar with contractors.

- The radio spots aired September 20th through October 3rd. Accordingly, the radio advertising was complete prior to the date Ameren Missouri reached the conclusion that the program had depleted its funds.
- The outdoor advertisements were put up on different dates, but in early to mid-October. However, because of the program fund depletion, they were removed early because Ameren Missouri stopped taking applications. The outdoor advertisements in the Cape Girardeau area were up the longest, from October 7th to October 20th. The outdoor advertisements in Columbia and Jefferson City went up later, on either October 18th or 19th, and were removed within days. Three of the planned outdoor advertisements were never put up. Exhibit 1 contains the exact dates of each outdoor advertisement and its location.

- The bill inserts were sent out in customer bills mailed between October 12th and 19th, to a total of 29,419 customers.⁴ The inserts were manually pulled from the remaining bills once the Company realized the program funds had been depleted. The Company took action to prevent as many inserts as possible from going out and was successful in preventing them from being mailed to 80% of Ameren Missouri's natural gas customers. While the Company regrets that any of the bill inserts were mailed, the insert told customers to view the Company's website, which was modified on October 12th to clearly state that reservations were no longer being accepted because of the depletion of funds.
- A webinar for residential and commercial contractors was conducted on September 22nd and a second webinar for commercial contractors was held on October 6th, before the fund depletion had occurred.

12. Ameren Missouri believes its marketing campaign was well designed and that its reaction to the depletion of program funds was appropriate. OPC itself had proposed that Ameren Missouri undertake a marketing campaign during the Collaborative meetings during the summer. Regardless, looking back, Ameren Missouri agrees that the timing of the launch of the marketing campaign and the depletion of funds was unfortunate. Because of these circumstances, the Company will not charge the expenses related to this advertising campaign to the money earmarked for this program. As OPC stated in its *Motion to Suspend*, Ameren Missouri also marketed this program in the spring of 2010. OPC asserts that the spring marketing effort spent the allocated

⁴ Ameren Missouri uses a 21 day billing cycle, which means it takes 21 days to mail out one monthly bill to all Ameren Missouri customers.

marketing funds for 2010. Ameren Missouri had offered to treat those funds differently, but will accept OPC's proposal and will apply those expenditures toward the marketing funds set aside for advertising within the proposed revised tariff, \$24,420. However, the amounts spent on the fall marketing campaign will not be charged to customers.

13. OPC's *Motion to Resolve Issues* continues on to allege that Ameren Missouri abused its discretion because it has not provided additional funding for this program using the authorized regulatory asset deferral mechanism approved in the *Stipulation*. The exact language of this portion of the *Stipulation* is important. It reads:

If AmerenUE elects to fund demand-side management programs in addition to those described above, the Parties agree the costs of those additional programs may be placed in a regulatory asset account and amortized over a ten-year period.⁵

This language clearly states it is the decision of Ameren Missouri and not of the Collaborative to provide additional funding. The fact the Collaborative went so far as to force a vote on additional funding when there is no ambiguity in the language of the *Stipulation* shows how far off track the Collaborative has gone on this issue.

14. For OPC to brand Ameren Missouri's decision not to provide additional funding as an abuse of discretion is absurd. This claim has no support in Commission order, rule or statute. Further, even if an abuse of discretion standard can be applied, there is no such abuse.

The test for abuse of discretion as applied in the review of court decisions is as follows: "judicial discretion is abused when the trial court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration; if reasonable

⁵ Paragraph 19 of Stipulation and Agreement in Case No. GR-2007-0003.

people can differ about the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.”⁶ To apply this standard to the situation at hand, the decision to not expend funds collected under lawful rates where there is not a requirement to expend such funds is not “clearly against the logic of the circumstances,” nor is it so arbitrary or unreasonable so as to shock the sense of justice.

15. This concept is further supported by the fact that the Commission has no authority to direct the management of a public utility. It is well-established that the Commission lacks authority to take over the management of regulated entities.⁷ A decision directing Ameren Missouri to expend funds, the expenditure of which is clearly within the discretion of the Company’s management, would be very much a violation of this principle. Additionally, to argue that Ameren Missouri voluntarily gave the Collaborative that type of authority is contrary to the language in the *Stipulation*.

16. OPC’s *Motion to Resolve Issues* also discusses a “Commission policy objective of increasing expenditures on energy efficiency and conservation.” OPC cites recent orders in a rate case for The Empire District Gas Company (Empire). The citation is to the Commission’s energy efficiency goal which was set for Empire. While that finding may be instructive as to what goal the Commission may contemplate if it were setting an energy efficiency goal for Ameren Missouri, there is no such goal at this time. If such a goal were to be set, it would be done in the context of a rate case rather than this case.

⁶ *State ex rel. Nixon v. American Tobacco Co.*, 34 S.W.3d 122, 131 (Mo 2000).

⁷ *St. ex rel. Southwestern Bell Telephone Co. v. Missouri Public Service Commission*, 262 U.S. 276, 43 S.Ct. 544, 67 L.Ed. 981 (1923); *St. ex rel. City of St. Joseph v. Public Service Commission*, 325 Mo. 209, 30 S.W.2d 8 (banc 1930); *St. ex rel. Laclede Gas Co. v. Public Service Com.*, 600 S.W.2d 222, 227-228 (Mo. App., W.D. 1980); *St. ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo. App. 1960).

Indeed, even if Ameren Missouri's decision not to contribute additional funds were in violation of a Commission "policy," it certainly cannot be deemed to be a violation of Commission rule as no rule concerning this subject has been promulgated by the Commission. Section 536.021(7), RSMo states that "except as provided in section 536.025 [emergency rulemaking], any rule, or amendment or rescission thereof, shall be null, void and unenforceable unless made in accordance with the provisions of this section." Thus, the alleged "policy" cited by OPC can provide no basis for a finding of a violation of Commission rules on the part of Ameren Missouri.

17. Instead, as Ameren Missouri has repeatedly stated in response in discussions with the Collaborative during this process, the level of funding for the Company's natural gas energy efficiency programs is a Company decision but may be addressed in the rate case that is currently pending, in that the regulatory treatment of those expenditures may become an issue.⁸ The regulatory treatment granted to these expenditures directly impacts the Company's decision to fund energy efficiency programs. In the Company's current rate case, Direct Testimony by the Department of Natural Resources was filed on November 8th and recommended substantial increases to Ameren Missouri's energy efficiency funding. The Staff Report indicated their funding recommendation would be provided in the Rate Design testimony to be filed November 19th. Accordingly, the Company hopes to address the regulatory treatment issue in the settlement discussions which are scheduled to occur in early December. If that issue can be favorably resolved, then the Company will be willing to discuss what level of funding is appropriate with the parties as well. If this issue cannot be resolved, then the issue of energy efficiency funding will be addressed at the hearing scheduled for early 2011.

⁸ Case No. GR-2010-0363.

18. OPC's *Motion to Resolve Issues* asks for expedited treatment and for a decision by the end of November. This appears to be an effort by OPC to force Ameren Missouri to contribute additional energy efficiency funding prior to the rate case settlement conference and prior to the outcome of the rate case, which are points at which these types of matters might more typically be discussed and even resolved. Even if this matter is not resolved in the settlement conference, it will likely be addressed in Ameren Missouri's rate case. The funding level in a tariff can be changed at any time, so there is no reason justifying forcing resolution of any future funding issue at this time.

WHEREFORE, Ameren Missouri files this pleading in response to the Commission's *Order Granting Motion for Extension of Time with Modification* and asks that the Commission deny OPC's request to suspend the effective date of the tariff change and, further, that it find Ameren Missouri has acted in accordance with the terms of the *Stipulation and Agreement* from Case No. GR-2007-0003 as they relate to the Company's natural gas energy efficiency programs.

Respectfully submitted,

UNION ELECTRIC COMPANY,
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 9th day of November, 2010.

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Ameren
2010 Gas Rebate Outdoor

Market	Location #	Location Address	Posted	Removed
Columbia	2640	E/S Highway 63, 1 mile N/O Highway 163	18-Oct	21-Oct
	4014	N/S I-70 .1 mile W/O Rt B	Never Posted	-
	4301	S/S I-70 3.1 mile W/O Exit 124	18-Oct	29-Oct
	5301	W/S Providence Road .15 mile S/O I-170	18-Oct	27-Oct
Jefferson City	3575	S/S Highway 54, 1 mile W/O Highway 63	Never Posted	-
	2496	E/S Highway 179, 200' S/O Merchants Drive	19-Oct	25-Oct
	2541	N/S Highway 54, .1 miles W/O Highway 50	19-Oct	21-Oct
	2680	N/S Highway 50, .5 miles W/O Cityview Drive	Never Posted	-
Cape Girardeau	5051	Independence w/o Sheridan Road	07-Oct	20-Oct
	5561	832 S. Kingshighway	07-Oct	20-Oct
	9491	1803 N. Kingshighway	07-Oct	20-Oct
	9471	1430 N. Kingshighway	07-Oct	20-Oct