

**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 Its Electric Energy)
Efficiency Programs)

Case No. ET-2012-0011

PUBLIC COUNSEL'S MOTION TO REJECT TARIFFS

COMES NOW the Office of the Public Counsel and for its Motion to Reject Tariffs states as follows:

1. On October 25, 2011, Union Electric Company, d/b/a Ameren Missouri, filed tariffs ("the proposed tariffs") designed to implement changes to its residential energy efficiency programs. The tariffs carry a November 24, 2011 effective date. In its filing, Ameren Missouri claimed that the proposed tariffs will "bridge the gap" between the expiration of its recently-defunct energy efficiency programs, which Ameren Missouri allowed to expire on September 30, 2011, and the Commission's issuance of an order regarding Ameren Missouri's upcoming Missouri Energy Efficiency Investment Act (MEEIA) filing.

2. This claim is disingenuous on at least two levels. First, all of Ameren Missouri's energy efficiency programs expired about two months before the earliest date at which the proposed tariffs in this filing would become effective, so there will be a significant gap at the front end before the programs in these tariffs can be in place. Second, there is almost certain to be a gap after these tariffs expire, when the extension of these very limited programs or the beginning of new programs approved under MEEIA might occur.

3. Ameren Missouri has made no commitment to make a MEEIA filing (although it has suggested a vague hope to make the filing by the end of the first quarter of 2012), nor has it given any indication of what type of regulatory treatment it will seek in its MEEIA filing. As a

result, there is no assurance that the tariffs that are the subject of this case will be in effect until the tariffs that result from the MEEIA filing are approved. In fact, if Ameren Missouri does not file its MEEIA application until the end of the first quarter of 2012 (i.e., March 31, 2012) and the Commission takes the four months contemplated by the MEEIA rules to approve the filing, the tariffs that are the subject of this case will have expired a month before earliest date the MEEIA programs would be in effect (the tariff that are the subject of this case bear end dates of June 30, 2012). The tariffs provide that the Company will stop accepting new applications for energy efficiency services one month prior to the June 30 end date so uninterrupted services are not even available through the end date of the tariff. Ameren Missouri's chronic stopping and starting of its gas and electric energy efficiency programs keeps all of these programs from achieving their potential. The interruptions and proposed drastic reduction in Ameren Missouri's energy efficiency programs have not only resulted in energy efficiency services not being available to its customers (to help them cope with the numerous rate increases that have been approved for Ameren Missouri over the last few years) but has also harmed the Company's ability to implement successful future programs through: (1) the damage done to the infrastructure needed to implement future programs; (2) the damage to relationships with implementation contractors and trade allies (e.g. HVAC contractors, lighting contractors, energy auditors, retail outlets for energy efficiency products, and commercial and residential energy auditors); and (3) the loss of momentum that these programs had achieved in the market place and with customers. Vendors, customers, and partners will be less inclined to participate in future programs when they know that Ameren Missouri is likely to once again pull the rug out from under them.

4. But even more than the botched and careless timing of the tariffs, the Commission should be concerned about and deeply disappointed with the **content** of the tariffs. The

Commission's standard for whether it should approve or reject the tariffs¹ is whether the tariffs are in the public interest. The public interest is determined by examining whether the tariffs would enhance or detract from Ameren Missouri's duty to provide safe and reliable service at just and reasonable rates while having an opportunity to earn a fair return on its investment. The Commission's primary duty, of course, is to protect the ratepayer. Any benefit to the shareholders beyond the simple opportunity to earn a fair return is merely incidental. The tariffs at issue here patently favor shareholder returns, and almost entirely ignore the duty to provide safe and adequate service in the most cost-effective manner.

5. Ameren Missouri's approach to energy efficiency, first revealed in its recent rate case (ER-2011-0028), flagrantly reiterated in its IRP filing and subsequent notice to the Commission of the change in the Company's preferred resource plan in its current Integrated Resource Planning case (EO-2011-0271), and hammered home with the token energy efficiency spending in these proposed energy efficiency tariffs, is to ignore the ratepayers' interests and only attend to the shareholders' interests. Having convinced the Commission to (1) lose focus on its duty to protect ratepayers when the Commission decided energy efficiency issues in ER-2011-0028 and (2) instead worry about Ameren Missouri's ability to maximize shareholder profits; Ameren Missouri with this tariff filing tries to build on that success and present the Commission with barely a token amount of energy efficiency programs. The small \$5 million budget for the energy efficiency programs in this tariff is only about 15% of the \$33 million in expenditures over the last year. Unfortunately, the smaller size and range of program offerings

¹ The Commission could suspend the tariffs if the Commission believed that further investigation would reveal additional information that would inform its decision. The tariff filing in this instance, however, presents such a starkly pro-shareholder and anti-ratepayer intent that it is hard to imagine that further investigation would reveal anything that could convince the Commission that it is in the public interest.

in the tariff means that the kWh reduction per dollar spent will be less than it was for last year's programs so that while Ameren Missouri's budget is about 15% of the former budget, the actual kWh impacts of the proposed programs will only be about 10% of the kWh reductions from last year. With programs that are expected to only achieve about one-tenth of the load reductions achieved last year, the argument that these programs should be approved to permit the resumption of at least some minimal program is simply not credible. Ameren Missouri's IRP analysis indicates it should be moving towards doubling its DSM programs rather than slashing expenditures and reducing impacts by 90%.

6. The policy that governs the Commission's regulation of an electric utility like Ameren Missouri is based upon what is commonly known as the regulatory compact. Pursuant to this compact, Ameren Missouri is given a monopoly service territory and a guaranteed opportunity to earn a fair return on investment. In exchange, Ameren Missouri submits to price regulation, in which the Commission can examine every aspect of Ameren Missouri's business to ensure that it is providing service in the most efficient manner possible. This regulation is grounded upon the police power of the state. If the Commission determines that Ameren Missouri is operating inefficiently by overbuilding physical plant², overcompensating employees, or paying too much for coal or other fuel sources, the Commission can exercise its police power and require Ameren Missouri to file tariffs that reflect an efficient operating cost.

² The apocryphal example of overbuilding is gold-plating a piece of equipment. The gold-plated piece provides exactly the same level of service to ratepayers as an equivalent un-plated piece, but provides a markedly greater return to the shareholders because the return is calculated upon the higher cost of the gold-plated piece. The effect on ratepayers is exactly the same if the Commission allows Ameren Missouri to ignore cost-effective energy efficiency programs. Whether it gold-plates equipment or refuses to invest in cost-effective energy efficiency programs, the end result is the same: in the long run, shareholders are earning more and ratepayers are paying more for the same level of service. Preventing this result is exactly why utility regulatory commissions were created a hundred years ago.

7. The exercise of this police power is not limited to just ratemaking. If the Commission determines that a certain minimum level of tree-trimming along transmission and distribution lines is necessary, it can require utilities to undertake that level, either through rules of general applicability or in specific cases pertaining to specific utilities. And if a utility's own analysis shows that the utility can reduce the long-run cost of providing service to its ratepayers by billions of dollars by pursuing energy efficiency, it is **incumbent** on the Commission to require the utility to do so. If the Commission fails to require the utility to act in the best interests of its ratepayers, the Commission is ignoring its primary purpose and abdicating its primary duty.

8. It is undisputed that a more aggressive pursuit of energy efficiency than the approach embodied in the proposed tariffs would lower Ameren Missouri's long-run cost of providing service to its customers.³ In both its most recent rate case (ER-2011-0028) and its current resource planning case (EO-2011-0271), Ameren Missouri has conceded that it could lower costs to its customers by **billions of dollars** over the next twenty years by aggressively pursuing energy efficiency. The Company's own IRP analysis indicates that alternative resource plans with realistically achievable (RAP) levels of DSM can reduce PVRR by roughly \$1.5 to \$2.5 billion present value dollars relative to the Low-Risk DSM resource plans. It refuses to aggressively pursue energy efficiency because shareholder earnings might be lower by a small fraction of this amount over the same period.

³ In the parlance of integrated resource planning, keeping long-run costs low is called minimizing the present value of revenue requirement (PVRR). This is the most important goal of resource planning, and the Commission, through its resource planning rules, requires utilities to select resource plans using minimization of PVRR as the primary selection criteria.

9. In its Report and Order in Case No. ER-2011-0028, the Commission cited Harline⁴ in defense of its deferral to the interests of Ameren Missouri shareholders over the interests of ratepayers. But Harline does not limit the Commission's police power to that extent. Indeed, the import of Harline has much more to do with a utility's authority than it does with the Commission's. The Court itself stated issue in the case as follows:

The basic issue for decision is: Must a public utility obtain an additional certificate of convenience and necessity from the Commission to construct each extension or addition to its existing transmission lines and facilities within a territory already allocated to it under a determination of public convenience and necessity?⁵

Although Harline is frequently cited as holding that the Commission's powers with respect to regulating utilities are quite limited, the case does not stand for such a proposition. The limitation in Harline has to do with the exercise of property rights:

The dominating purpose in the creation of the Public Service Commission was to promote the public welfare. To that end the statutes provided regulation which seeks to correct the abuse of any property right of a public utility, not to direct its use. Exercise of the latter function would involve a property right in the utility. The law has conferred no such power upon the Commission.⁶

Thus all Harline really tells us is that the Commission's authority does not extend to dictating to a utility how to exercise its property rights. The oft-quoted line about the Commission not having "the general power of management incident to ownership" must be viewed in that limited context.

10. In fact, were the Commission's powers so limited, under what authority does the Commission require specific intervals of tree-trimming or infrastructure inspections? It is hard

⁴ State ex rel. Harline v. Public Serv. Com'n, 343 S.W.2d 177 (Mo. App. 1960)

⁵ *Ibid.*, at 180.

⁶ *Ibid.*, at 181.

to imagine a more intrusive assertion of power over a utility's management than a rule that requires someone to go look at every single pole at certain specified intervals, or trim trees along every single foot of distribution lines at specific intervals. And yet the Commission appears to be of the opinion that it can impose such requirements, but at the same time is powerless to require the same utility to take steps that would lower costs by billions of dollars over the next twenty years. The Commission must not lose sight of its true purpose, which is to use the police power of the state to prevent monopoly utilities from passing inflated costs on to captive customers.

11. In fulfilling that purpose with respect to the proposed tariffs, the Commission should recognize that they are not in the public interest because they will, by Ameren Missouri's own admission, cause rates to be billions of dollars higher than they could be. As recently as September 30, 2011, Ameren Missouri was offering a suite of cost-effective energy efficiency programs that, if continued, would lower long-run costs to Missouri ratepayers by billions of dollars over a twenty-year planning horizon.⁷ The Commission should reject the proposed tariffs as not being in the public interest, and order Ameren Missouri to immediately file new tariffs that would re-institute the residential and business programs that Ameren Missouri allowed to lapse on September 30, 2011. The Commission should also order Ameren Missouri to file a MEEIA application no later than March 31, 2012, because the recently-lapsed tariffs (while better than the proposed tariffs) do not capture all cost-effective energy efficiency.

⁷ This suite of programs, while much better than the proposed tariffs, does not approach the level of energy efficiency expenditures that Ameren Missouri's resource plan indicates should be implemented to minimize PVRR, but because Ameren Missouri has experience with this suite of programs, it could quickly re-start them if ordered expeditiously to do so since the duration of the current program interruption is still relatively short at this point in time.

WHEREFORE, Public Counsel respectfully requests that the Commission reject Ameren Missouri's proposed tariffs and order the immediate filing of tariffs that would re-establish the programs that Ameren Missouri allowed to lapse on September 30, 2011, and order Ameren Missouri to make a filing under MEEIA no later than March 31, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been transmitted by e-mail this 14th day of November, 2011, to all parties on the Commission's service list in this case.

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