

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

Beverly A. Johnson,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2008-0295
)	
Missouri Gas Energy,)	
)	
Respondent.)	

**DISSENTING OPINION OF COMMISSIONER KEVIN D. GUNN
AND CHAIRMAN ROBERT M. CLAYTON, III**

These Commissioners respectfully dissent from the majority opinion in this case. These Commissioners do so reluctantly because the testimony in this case demonstrates not only that Ms. Johnson is unable to pay past debt, but more importantly, is unable to pay any obligations that would be incurred if gas service was restored.¹ Therefore, to find in favor of Ms. Johnson and excuse the debt may only be delaying the inevitable or may be creating more bad debt that would ultimately be recovered from Missouri Gas Energy's (MGE's) other ratepayers.

However, these Commissioners must dissent not because of what is in the Report and Order (the Order), but what is not included in the Order. The majority fails to address an apparent conflict between Missouri State Statute, Commission rule and MGE's tariff, nor does it address potential double recovery by MGE.

¹ Transcript p. 48, Ins. 10-16, and pp. 51-52, Ins. 20-23).

First, the majority does not properly deal with an apparent conflict between the appropriate statute of limitations and MGE's tariff. Specifically, the majority does not address whether the 5-year statute of limitations contained in 516.120(1)² applies, or the 10-year statute of limitations in 516.110(1) applies. Instead, it merely states, in a conclusory manner, that the application of the statutes is irrelevant to the discussion. The majority contemplates that while a debt may not be collectible under a statute of limitations, it cannot be "legally extinguished".³ So, while the time to collect is outside the statute of limitations, it remains collectible under MGE's tariff. Despite the clear conflict, the majority fails to deal with the issue, ignores the pertinent statutory language and looks exclusively to MGE's tariff which allows the collection of outstanding debt before gas service is re-established irrespective of when the debt was incurred.

These Commissioners believe that this conflict should have been resolved and if necessary, MGE should have been ordered to revise to conform to the applicable statute of limitations.

Finally, the majority fails to address the issue of potential double recovery by MGE. If even a portion of Ms. Johnson's debt is ultimately recovered, MGE would be required to credit that amount to its other ratepayers. However, the amounts in question are so small as to give almost no benefit to individual ratepayers. Meanwhile, MGE has been allowed to aggregate all of its bad debt, including Ms. Johnson's, and recover that bad debt from other ratepayers in an

² Hereinafter all references to the Revised Statutes of Missouri are to the 2000 edition unless otherwise stated.

³ *Beverly A. Johnson v. Missouri Gas Energy*, Case No. GC-2008-0295, Report and Order p. 25.

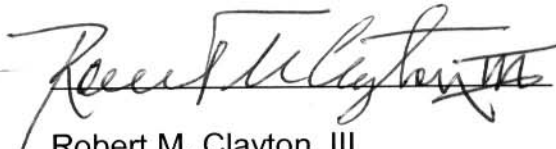
intervening rate case. MGE may also have benefited from favorable tax treatment if the bad debt was written off. Since no mechanism exists to effectively track whether Ms. Johnson's debt has been recovered through a previous rate case, the majority should have considered and fully addressed the issue of potential double recovery. Instead, Ms. Johnson's debt will remain while ratepayers or favorable tax treatment may have already made MGE whole.

The majority's failure to address the statute of limitations issue, the unresolved issue of the conflict between a Missouri Statute and MGE's tariff and the complete lack of discussion regarding the possibility of double-recovery forces this Commission to respectfully dissent.

Respectfully submitted,



Kevin D. Gunn,
Commissioner



Robert M. Clayton, III
Chairman

Dated at Jefferson City, Missouri,
on this 11th day of February, 2009.