BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

PUBLIC COUNSEL'S
MOTION FOR RECONSIDERATION

COMES NOW the Missouri Office of the Public Counsel and for its Motion for Reconsideration requests that the Commission reconsider its October 7, 2008 *Order Granting Petition to File as Amicus Curiae Out of Time and Setting Deadline for Responses* ("Order"):

1. On September 26, 2008, the Commission's Staff and Missouri Gas Energy (MGE) submitted briefs to the Commission on a singular issue of law: "whether the statute of limitations in Section 516.120.1 applied to any unpaid debt that Ms. Johnson allegedly owes MGE."

2. On October 7, 2008, eleven (11) days out of time, the Missouri Energy Development Association (MEDA) filed a petition for leave to file a brief as *amicus curiae* out of time. On the very *same day* that MEDA filed its request, the Commission's Order granted MEDA's motion without giving opposing parties ten (10) days to respond as allowed under 4 CSR 240-2.080(15).

3. Public Counsel requests that the Commission reconsider its Order, deny MEDA's motion, and reject MEDA's *amicus* brief.

4. The Order finds "MEDA's stated reasons for filing its *amicus* brief to be good cause for granting its request." The reasons cited by MEDA are: 1) No party will be prejudiced; 2) No party will be hampered because responsive briefs are not allowed; and 3) MEDA was not given proper notice of Staff's position. Public Counsel asks that the Commission reject these reasons.

5. The Commission should first reject MEDA's argument that it was not given proper notice of the Staff's position. MGE is a member of MEDA, and both MGE and MEDA are represented by the *same law firm* and had sufficient notice of the due date for briefs. The Staff's position was first articulated on August 22, 2008 and briefs were filed more than a month later. MEDA offers no reasonable explanation as to why its *amicus curiae* brief and petition were not timely filed as required by 4 CSR 240-2.075.

6. Rather than file a timely brief, MEDA waited until the Staff filed its brief in a procedural schedule that did not allow for responsive briefs, and then filed what was essentially a responsive brief on behalf of MGE and the other member companies of MEDA. Granting MEDA's request essentially allows MGE to circumvent the procedural schedule with the filing of a reply brief with additional argument in response to the Staff's brief.

7. The Commission's rules specifically prohibit *amicus curiae* from filing a reply brief. 4 CSR 240-2.075(6). MEDA begins its "Argument" section in its brief by stating that it is responding to the Staff's arguments and that it concurs in MGE's arguments and statement of facts. A reading of MEDA's *amicus* brief proves that it is clearly a reply brief, responding specifically to the arguments raised by the Staff's brief, which is prohibited by the Commission's rules.

8. The Commission should also reject MEDA's argument that no party is prejudiced. Allowing the same party to be twice represented in this proceeding prejudices the Complainant and the Commission's Staff. MEDA offers no explanation as to why the interests of its member companies are not adequately represented by MGE, which again, is represented by the same law firm arguing the same position.

9. Lastly, Public Counsel is not aware of any statutory authority that would allow a regulatory law judge of the Commission to issue an order by delegation granting a petition to file a brief an *amicus curiae* brief and to late-file an *amicus curiae* brief.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission reconsider its *Order Granting Petition to File as Amicus Curiae Out of Time and Setting Deadline for Responses,* and reject MEDA's petition to file an *amicus curiae* brief out of time.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 16th day of October 2008:

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