

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

In the Matter of Proposed Emergency)	
Amendment to Commission Rule)	Case No. GX-2006-0181
4 CSR 240-13.055.)	

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

Today, the Commission issued an Order finding it necessary to file an emergency amendment to our "Cold Weather Rule"¹ in order to address the record high prices for natural gas. I must dissent from this Order because I disagree that any necessity has been shown for an emergency amendment.

Much publicity has been given to the fact that natural gas prices have soared to record highs this year. The Commission itself has made attempts to advise the public that they need to take steps to winterize their homes and cut energy costs. We allow local distribution companies ("LDCs") to file purchased gas adjustment tariffs to pass these costs through to their customers. These LDCs do not make a profit from the sale of natural gas itself, so they must be allowed to pass the costs through to customers in order to cover their expenses.

I do not dispute the fact that it will be difficult for many Missourians to pay their natural gas heating bills this winter. I do not, however, believe that additional amendments to the Cold Weather Rule will provide any more assurance that these events will be avoided. I believe that these amendments will eventually place even more of a burden on ratepayers – both those that have trouble paying their bills, and those who pay their bills despite the additional burdens.

¹ 4 C.S.R. 240-13.055.

The existing Cold Weather Rule has recently been through close review and amendment.² Nothing in the pleadings in this case or in the evidence submitted at the hearing indicates that the current Cold Weather Rule is inadequate to address the needs of Missourians. Instead, the focus of the evidence points to the crisis of this year's high natural gas rates. I believe the evidence is lacking in establishing the need for emergency amendments when no deficiencies in the current rule have been shown.

Even the Commission's staff found that most provisions of the existing Cold Weather Rule, along with the voluntary steps agreed to by our LDCs,³ would be sufficient to meet the needs of customers during this winter heating season. Staff suggested a few small tweaks to the existing rule, but did not endorse the overkill suggested by Public Counsel.

The cause that the Office of Public Counsel sites for this "emergency" – that natural gas prices are at record high levels – has been reported in the media and been an issue before the Commission for months now. Yet Public Counsel waited to file its request to address this issue ten days prior to the November 1 onset of the winter heating session. There is no explanation as to why Public Counsel was unable to make its request for amendment to the Cold Weather Rule on a more timely basis – in time to allow the Commission and the parties to really vet the issues before them, rather than make radical changes that have had little time for discussion and review. Emergency amendments lack the traditional due process requirements of rule-making and should not be pursued unless there is clear and convincing evidence of the need for such actions.

² See Case No. GX-2004-0492; rule amendments effective on October 30, 2004.

³ As noted in the media, Governor Matt Blunt negotiated an agreement with the Local Distribution Companies to address concerns that Missourians would have their heat cut off. These included some of the measures in the amendment to the Cold Weather Rule.

Without time for discussion and review, it is unlikely that the consequences of these drastic measures have been thought through. Missouri residents who are already behind on their natural gas utility payments are only going to get further behind because of the provisions of this rule. Next winter, when the next "crisis" occurs, as it apparently has for three of the last four winters,⁴ these same people will be so far in arrears as to never get out. This result will increase utility bad debt accounts. In the end, this will hurt all Missouri consumers of natural gas, as they will be asked to cover those same bad debts through increases in their rates. This, in my opinion, amounts to a hidden tax on Missourians that they have no representation or voice in, because Public Counsel has unilaterally decided that Missourians who are able to pay their natural gas bills have the social obligation to supplement those who cannot, or will not.

And if we determine that the LDCs cannot recover these losses from other ratepayers, as suggested by amendments to the Cold Weather Rule, we may affect the credit rating and potentially the solvency of these companies. This too will increase overall rates, because the costs of the LDCs will soar, requiring additional rate increases.

Finally, I am concerned that the recovery mechanism that is included in the emergency amendments will be insufficient to withstand judicial review. The emergency amendments in this case are similar to ones that were put into place in 2001 when natural gas prices set records then.⁵ These same changes were stayed by the Circuit Court of Cole County because the cost recovery mechanism (the same one suggested in the current case) was deemed inadequate by the court to compensate the LDCs for

⁴ I find it interesting that we keep having these repeated "crises" in winter heating costs. The point of the 2004 amendments to the Cold Weather Rule was to address these problems before they became a crisis. Again, there is no evidence that those amendments were not adequate.


⁵ See Case No. AX-2002-0203.

the reductions in revenue, income and achieved returns resulting from the emergency amendment.⁶ While it is doubtful that any of the LDCs will challenge the emergency amendments in this case because of internal and external pressures to reach an agreement, the Commission should be concerned that the proposed cost recovery mechanism is inadequate.

I would suggest that we establish a process that addresses these issues on a broad basis, and that would determine whether there really is a social need that must be addressed. This process should require that state and local governments come to the plate with ideas for explicit funding mechanisms to address the need; not funding *hidden within utility rates*.

For the foregoing reasons, I must dissent to the Commission's Order of Necessity to file emergency amendments to 4 CSR 240-13.055.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri
on this 13th day of December, 2005.

⁶ See Stay Order in Case No. 10CV325865, consolidated with Case No. 01CV325866 In the Circuit Court of Cole County, Missouri (November 27, 2001).