

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

In the Matter of the Application of)	
Missouri Gas Energy for the Issuance of)	
an Accounting Authority Order Relating)	Case No. GU-2011-0392
to its Natural Gas Operations and for a)	
Contingent Waiver of the Notice)	
Requirement of 4 CSR 240-4.020(2))	

PUBLIC COUNSEL’S POSITION STATEMENT

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Position Statement summarizes OPC’s position on each issue identified in the joint Issues List as follows:

A. Should the Commission enter an order authorizing MGE to defer to Account 182.3, Other Regulatory Assets, actual incremental Operations & Maintenance and capital expenses incurred for repair, restoration, and rebuild activities associated with the May 22, 2011, Joplin tornado, including depreciation and carrying charges equal to MGE’s ongoing Allowance for Funds Used During Construction rates?

OPC will not oppose an Accounting Authority Order (AAO) allowing MGE to defer expenses caused by the Joplin tornado so long as conditions are in place to ensure the accuracy of the deferred amount. MGE should be required to work with the Commission’s Staff and OPC to defer only those expenses that were truly caused by the tornado, offset by insurance reimbursements received by MGE.

The deferral should also be offset to prevent double recovery of capital expenses since MGE’s existing rates already recover the costs of the damaged facilities. For example, MGE is already recovering in rates for the 10-miles of distribution main that

MGE alleges needs to be replaced. The deferral should not allow MGE to recover for both the damaged 10-mile main and a new 10-mile main for the same period since it is possible only for one facility to be used and useful at any given time.

Lastly, any deferral should be conditioned upon MGE filing a rate case within two years from the May 22, 2011 tornado.

B. Should the Commission enter an order authorizing MGE to defer to Account 182.3, Other Regulatory Assets, its loss of expected revenues related to the May 22, 2011, tornado, including carrying charges equal to its ongoing Allowance for Funds Used During Construction rates?

OPC strongly opposes MGE's request for an AAO that would authorize MGE to defer unearned revenues and carrying charges from the period in which the revenues were only *expected* to be earned to future periods for possible recovery. Among the reasons that support an order rejecting this AAO request are the following:

a. **Shareholders Are Already Compensated for Risks.** Shareholders incur business risk when investing in a regulated utility and are compensated for that risk in the form of a premium in the return on equity. Granting this AAO would force ratepayers to continue paying a risk premium to protect shareholders from the possibility of system damage while also forcing ratepayers to suffer the consequences when those risks are realized and damage occurs. This begs the question, what is the purpose of a risk premium if ratepayers are forced to assume all risks?

b. **Utility Regulation Provides an Opportunity, Not a Guarantee.** Granting this AAO request would suggest that the Commission believes it should guarantee a certain level of revenues to a public utility like MGE, which is contrary to the

long history of case law requiring rates to provide no more than an *opportunity* to earn a reasonable return on investment.

c. **Unprecedented Request.** To the best of OPC’s knowledge, no utility in the history of utility regulation has been authorized to defer alleged unearned revenues from one period to the next as a result of losing customers due to an extraordinary event. Such an unprecedented accounting treatment violates the USOA’s requirement that utility accounting “reflect all items of profit and loss during the period” incurred.

d. **Does Not Meet the 5% Requirement.** The requested deferral does not meet the definition of “extraordinary item” because it is not “more than approximately 5 percent of income, computed after extraordinary items” as required by the USOA.

e. **MGE is Not Earning Less Revenue.** Based on data provided by MGE, MGE is not earning less revenue on a total company basis than it earned for the same period in prior years.

f. **Services Were Not Provided:** MGE no longer receives revenues from its former customers because MGE no longer provides gas distribution services to former customers. Approving a deferral of unearned revenue would tell future customers that the Commission has accepted the argument that future customers may be liable to MGE for past services that were never provided to customers that no longer exist.

g. **Facilities Are Not Used or Useful.** Since the former customers no longer receive service, approving a deferral of unearned revenue would violate the requirement that a public utility recover only the costs of facilities that are used and useful in the provision of utility service.

h. **Impossible Tracking of Unearned Revenue.** Tracking what MGE would have allegedly earned in revenue from former customers in Joplin is an impossible task. It would need to account for a multitude of unknown variables, including the number of customers that would have left MGE's system voluntarily absent the tornado. It would also need to account for customers as they return to the system in their former locations or in new locations.

- C. **If the Commission authorizes MGE to defer these amounts:**
 - a. **When should MGE commence amortizing the deferred amounts to expense?**
 - b. **Over what length of time should MGE amortize the deferred amounts to expense?**

If the Commission authorizes MGE to defer any amount through an AAO, the Commission should use a 10-year amortization period commencing on either the Company's or Staff's proposed commencement dates. Using a 10-year period is more appropriate given Mr. Noack's testimony that 85.3% of the costs subject to deferral are capital related.

WHEREFORE, the OPC respectfully offers this Position Statement.

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 all counsel of record this 22nd day of November 2011:

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