BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Missouri Service Area.	))))	Case No. GR-2009-0355

PUBLIC COUNSEL'S POSITION STATEMENT

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Position Statement offers the following brief statements reflecting OPC's positions on all currently unresolved issues:

I. REVENUE REQUIREMENT

A. Cost of Capital

1. Capital Structure: *What capital structure should be used for determining MGE's rate of return?*

OPC Position: The most equitable capital structure for Missouri Gas Energy (MGE) and MGE's ratepayers is the actual capital structure of Southern Union, as proposed in the testimony of OPC witness Mr. Daniel Lawton and as ordered in MGE's last rate case. Using Southern Union's actual capital structure is preferred over using the hypothetical capital structure proposed by MGE because the hypothetical capital structure would allow MGE to recover revenues in excess of cost.

2. Return on Common Equity: *What return on common equity should be used for determining MGE's rate of return?*

OPC Position: OPC witness Mr. Dan Lawton recommends 10.0% as a just and reasonable return on common equity. If the Commission adopts MGE's rate design proposals to recover all non-gas costs in a single fixed customer charge for Residential and SGS customers, the reduction in risk associated with ensuring recovery of non-gas should be offset through a 50 basis point reduction to ROE, or a $1,842,034 reduction in cost of service.

3. **Cost of Debt:** *What long term and short term cost of debt should be used for determining MGE's rate of return?*

OPC Position: The appropriate long term and short term cost of debt for determining MGE's rate of return witness is as follows, as testified to by OPC witness Mr. Daniel Lawton:

ACTUAL CAPITAL STRUCTURE			
DESCRIPTION	RATIO	COST	WEIGHTED COST
Long-Term Debt	56.16%	6.258%	3.514%
Short-Term Debt	3.26%	5.920%	0.193%
Preferred Equity	1.92%	7.758%	0.149%
Common Equity	38.66%	10.000%	3.866%
Total	100.00%		7.722%

4. **Risk:** *Would the Commission's adoption of MGE's proposed rate design that recovers all non-gas costs in a fixed customer charge for Residential and SGS customers reduce MGE's business risk? If the answer is "yes," should that reduced risk be recognized in the determination of either cost of capital or the revenue requirement?*

OPC Position: Yes. A rate design that recovers all non-gas costs in a fixed customer charge would significantly reduce MGE's risk of recovering its costs. As explained in the testimony of OPC witness Mr. Daniel Lawton, this risk reduction can be recognized through either a reduction to MGE's authorized return on equity of 50 basis points, or through a $1,842,034 reduction to MGE's revenue requirement.

B. Expense Issues

Environmental Expenses: *What amount related to Former Manufactured Gas Plant (FMGP) remediation expense should be used in determining MGE's cost of service?*

OPC Position: MGE's environmental expense used in determining MGE's cost of service should exclude all FMGP remediation expenses because: 1) MGE was compensated for the FMGP liability through the purchase price of the MGE gas system from Western Resources, Inc; 2) The FMGP plant is not used and useful in providing service to current customers and recovery would constitute retroactive ratemaking; 3) Present customers should not be required to pay for past deficits of MGE in future rates; 4) Shareholders are compensated for this particular business risk through the risk premium inherent to the equity portion of MGE's weighted average rate of return; 5) Shareholders, not ratepayers, receive the benefits of any gains or losses of any sale or removal from service of MGE-owned land or investment; 6) The liability did not occur as a result of the gas service MGE provides to existing customers; and 7) Automatic recovery of remediation costs from customers may reduce the incentive for MGE to seek partial or complete recovery of the costs from other potentially responsible parties. The testimony of OPC witness Mr. Ted Robertson provides additional explanation.

Infinium Software: *What amount related to MGE's Infinium Software amortization should be used in determining MGE's cost of service?*

OPC Position: No amount related to MGE's Infinium Software amortization should be used in determining MGEs' cost of service. Instead, the entire unamortized balance should be disallowed and written off as a non-recoverable loss. The Infinium Software is not "used and useful" for current customers and there is no lawful or reasonable justification for requiring MGE's ratepayers to pay for MGE's decision to prematurely replace the Infinium Software with a new software system. The testimony of OPC witness Mr. Ted Robertson provides additional explanation.

SLRP Amortization: *What amount related to the Safety Line Replacement Program amortizations should be used in determining MGE's cost of service?*

OPC Position: OPC recommends that the Safety Line Replacement Program (SLRP) expense amortization be eliminated for the development of new rates because the revenues associated with the amortization of the five SLRP programs will over-recover the Accounting Authority Order deferrals by approximately $1,397,460. OPC recommends that the SLRP expense amortization, for the development of new rates on a going forward basis, be eliminated completely. The testimony of OPC witness Mr. Ted Robertson provides additional explanation.

FAS 106/ OPEBs:

a. *Is it lawful and reasonable to require MGE to fund its external OPEB trusts in an amount equal to the FAS 106 allowance included in rates such that MGE is required to deposit a "catch-up" amount into its OPEB trusts in order to make use of FAS 106 in determining MGE's cost of service?*

OPC Position: Yes, it is both lawful and reasonable because if the amount of OPEB expense included in rates was greater than the amount MGE actually funded its plans, then MGE should be required to fund the OPEB trusts by that excess amount. Ratepayers should not be required to pay for the OPEB trusts through rates only to have MGE fund the trusts by an amount that is less than the amount paid by ratepayers. MGE's approach violates Section 386.315 RSMo 2000 which states that "[i]n no event shall any funds remaining in such funding mechanisms revert to the utility after all qualified benefits have been paid; rather, the funding mechanism shall include terms which require all funds to be used for employee or retiree benefits." MGE's approach should also be rejected as unreasonable because it imposes additional costs on ratepayers. The testimony of OPC witness Mr. Ted Robertson provides additional explanation.

b. *If so, what is the appropriate "catch-up" amount?*

OPC Position: OPC concurs with Staff witness Mr. Mark L. Oligschlaeger's rebuttal testimony identification of the amount of underfunding of FASB 106 plans to be approximately $16.5 million.

c. *What is the appropriate level of OPEB expense to use in determining MGE's cost of service?*

OPC Position: OPC has not taken a position on this issue at this time. OPC may take a position following the evidentiary hearing.

Regulatory Commission Expense: *What amount related to regulatory expenses should be used in determining MGE's cost of service?*

OPC Position: OPC's position is that the amount of rate case expense should only include a normalized annual level of charges that directly benefit ratepayers. Since both ratepayers and shareholders benefit from prudent regulatory expenditures, OPC recommends that MGE be allowed to recover only 50% of its prudent incremental in-house rate case expenses. In addition, OPC recommends that expenses incurred for prior general rate increase cases should not be included in MGE's cost of service because they would constitute double recovery of costs from ratepayers. OPC also recommends that only the most recent PSC assessment be allowed as an expense to be determined in MGE's cost of service. Lastly, OPC recommends that the legal costs for a number of cases should be eliminated from regulatory commission expense because legal representation could have been handled more cost-effectively and efficiently in-house by MGE employees. The testimony of OPC witness Mr. Ted Robertson provides additional explanation.

Uncollectibles Expense: *What amount related to uncollectibles expense should be used in determining MGE's cost of service? Should the emergency cold weather rule amortization have an impact upon this amount?*

OPC Position: OPC witness Mr. Russell Trippensee recommends that $9,298,066 be included in the revenue requirement as the appropriate amount of bad debts. This amount includes a $387,256 reduction related to the monies received as a result of the Commission's Cold Weather Rule (CWR) Accounting Authority Order amortization. The testimony of OPC witness Mr. Russell Trippensee provides additional explanation.

II. KANSAS GAS STORAGE PROPERTY TAX AAO – *Should the Commission grant MGE an accounting authority order concerning Kansas property taxes on natural gas in storage in the State of Kansas? If so, under what conditions?*

OPC Position: No. The Kansas Property Tax does not meet the Uniform System of Accounts definition of "extraordinary item" to warrant deferral of costs from the period in which the costs are incurred to a later period for recovery. If MGE incurs a Kansas Property Tax on gas held in storage, those amounts will be incurred after the end of the Commission ordered test year, update period, and MGE's requested true-up period. The testimony of OPC witness Mr. Ted Robertson provides additional explanation.

III. ENERGY EFFICIENCY

A. Relationship to rate design - *Should the continuation (for residential customers) or implementation (for small general service customers) of energy efficiency programs be contingent on the adoption of a rate design that recovers all non-gas costs through a fixed customer charge?*

OPC Position: No. The Commission should order MGE to implement energy efficiency programs regardless of the rate design approved by the Commission. MGE's attempt to link the continuation or expansion of their fixed charge rate design to MGE's willingness to offer energy efficiency programs reaches way beyond what is necessary to hold MGE harmless from the usage reductions that would result from energy efficiency programs that benefit customers. The testimony of OPC witness Mr. Ryan Kind provides additional explanation.

B. Funding - *Should funding for energy efficiency programs be included as an ongoing expense in rates, or should the Company provide upfront funding with such expenditures to be deferred (after expenditure of the surplus unspent funds for residential energy efficiency programs (expected to be approximately $1 million) that still remain at the time new rates from this case become effective) and included in rate base (with a 10-year amortization period) in subsequent rate cases?*

OPC Position: Funding for energy efficiency programs should <u>not</u> be included as an ongoing expense in rates. OPC proposes that the Commission create a regulatory asset account to allow MGE to track energy efficiency expenditures and costs for future recovery in MGE's next rate case. The testimony of OPC witness Mr. Ryan Kind provides additional explanation.

What should the annual funding level be and how should the funding level be determined?

OPC Position: The Commission should not order an annual funding level to be recovered in rates, and should instead make an adjustment to remove the $750,000 annual funding amount for MGE's existing residential energy conservation programs. OPC proposes that the Commission direct MGE to create a regulatory asset account that would initially have a negative balance of approximately $1 million to $1.2 million to reflect the surplus of unspent residential energy efficiency funding plus interest previously collected from ratepayers. The testimony of OPC witness Mr. Ryan Kind provides additional explanation.

Should interest be applied to unspent residential energy efficiency funds and, if so, at what rate?

OPC Position: OPC believes ratepayers should be property compensated when they supply monies to the utility via the regulatory process. It is OPC's position that the overall cost of capital is the appropriate rate to use when calculating interest on the energy efficiency funds so that all ratepayer supplied funds are treated consistently with all other monies supplied by ratepayers in the regulatory process. The testimony of OPC witness Mr. Russell Trippensee provides additional explanation.

C. Continuation/Form of Collaborative - *Should the energy efficiency collaborative formed after MGE's most recently concluded rate case as a result of the Commission's approval of the Unanimous Stipulation and Agreement in Case No. GT-2008-0005 be modified to an advisory group rather than a consensus decision making collaborative?*

OPC Position: No. OPC believes the consensus decision making collaborative ordered in GT-2008-0005 should continue to ensure that all stakeholders have sufficient input into the design and implementation of energy efficiency programs. The testimony of OPC witness Mr. Ryan Kind provides additional explanation.

IV. RATE DESIGN/COST OF SERVICE

A. Class Cost of Service / Spread of the Increase - *What is the appropriate level of revenue responsibility to be borne by each customer class?*

OPC Position: Public Counsel recommends that where the existing revenue structure departures greatly from the class cost of service, the Commission should impose, at a maximum, class revenue shifts equal to one half of the "revenue neutral shifts" indicated by Public Counsel's class cost of service study. Revenue neutral shifts are shifts that hold overall company revenue at the existing level but allow for the share attributed to each class to be adjusted to reflect the cost responsibility of the class. In addition to moving half way to the revenue neutral shifts, OPC recommends that if the Commission determines that an overall increase in revenue requirement is necessary, then no customer class should receive a net decrease as the combined result of: (1) the revenue neutral shift that is applied to that class, and (2) the share of the total revenue increase that is applied to that class. This proposal is outlined in the testimony of OPC witness Ms. Barbara Meisenheimer.

B. Rate Design

1. *What rate design should the Commission adopt for the residential customer class?*

OPC Position: The Commission should adopt the traditional rate design that recovers non-gas costs through a two-part rate that recovers fixed costs through a fixed charge and demand costs through a volumetric rate. This is a rate design that this Commission and regulatory utility commissions across the county have repeatedly found to be a just and reasonable method of designing rates. OPC recommends a rate design that recovers 55% of residential revenue through the monthly fixed charge, while the remaining 45% of residential costs would be recovered through a uniform volumetric rate. This rate design properly assigns costs by recognizing that low volume users cause MGE to incur fewer costs than high volume users because certain facilities incur costs based on demand. The testimony of OPC witness Ms. Barbara Meisenheimer provides additional explanation.

2. *What rate design should the Commission adopt for the small general service customer class?*

OPC Position: OPC recommends that the Commission adopt the traditional rate design for the same reasons the traditional rate design is appropriate for the residential class. The testimony of OPC witness Ms. Barbara Meisenheimer provides additional explanation.

3. *What rate design should the Commission adopt for the large general service customer class?*

OPC Position: OPC recommends that the Commission adopt the traditional rate design for large general service.

4. *What rate design should the Commission adopt for the large volume service customer class?*

OPC Position: OPC recommends that the Commission adopt the the traditional rate design for large volume service.

5. *What miscellaneous service charges should the Commission approve?*

OPC Position: OPC believes the increased service charges proposed by MGE should be based on costs and supports cost based increases provided any net increase in revenue associated with these charges is reflected as an offset to costs in determining revenue requirement. In addition, OPC does not support MGE's proposal to include $3.50 per credit card payment into MGE's revenue requirement.

V. TARIFF CHANGES

A. Transportation/Threshold for Eligibility:

Should the Commission reduce the currently approved volume threshold for transportation service eligibility? If so, to what level and under what conditions?

OPC Position: OPC takes no position on this transportation issue at this time. OPC may take a position following the evidentiary hearing.

B. Transportation/Other:

Should the Commission approve the changes proposed by MGE to its Large Volume Transportation Service tariff for which MGE alleges an intent to to encourage

Large Volume Transportation Service Customers to maintain a closer balance between their deliveries to the system and their usage on the system, to-wit:

- *i)* *Deadline for notice of pool changes;*
- *ii)* *Proposed elimination of multiple pools per aggregation area;*
- *iii)* *Transportation charge component of cash-outs for imbalances (amount and symmetry of the charges):*
- *iv)* *Index price for cash outs;*
- *v)* *Circumstances and conditions for calling OFOs;*
- *vi)* *Supplier/agent's ability to move customers from a pool on one pipeline to another pipeline in the event of capacity constraints;*
- *vii)* *Miscellaneous language changes.*

OPC Position: OPC takes no position on these transportation issues at this time. OPC may take a position following the evidentiary hearing.

C. Non Transportation:

1. *Liability limitation*

OPC Position: It is OPC's understanding that this issue is to be addressed in the Staff's Complaint against MGE, Case No. GC-2009-0036.

2. *Tariff clean-up (ELIR, etc.)*

OPC Position: OPC takes no position on this issue.

D. PGA

1. Uncollectible Gas Cost Recovery in PGA: *Should the Commission authorize MGE to recover uncollectible gas costs through the PGA mechanism?*

OPC Position: No. The Commission should reject MGE's request to recover uncollectible gas costs through the PGA mechanism for the same reasons the Commission rejected the same proposal by Laclede Gas Company in Case No. GT-2009-0026. The testimony of OPC witness Mr. Russell Trippensee provides additional explanation.

2. Kansas Storage Gas Property Tax Recovery in PGA:

Should the Commission authorize MGE to recover Kansas storage gas property taxes in the PGA mechanism?

OPC Position: No.

3. FERC Regulatory Expense Recovery in PGA: *Should the Commission authorize MGE to recover FERC regulatory expenses in the PGA mechanism?*

OPC Position: No.

VI. CAPACITY RELEASE/OFF-SYSTEM SALES:

Should the Commission amend the currently approved sharing grid which describes sharing of net revenues from MGE's capacity release and off-system sales between the Company and its customers? If so, what changes should be made?

OPC Position: Yes. OPC believes a more equitable sharing between MGE and ratepayers would be achieved by amending the sharing grid pursuant to the testimony of Staff witness Ms. Anne Allee, which would adjust the dollar value for each tier of sharing to $2,000,000.

WHEREFORE, the Office of the Public Counsel respectfully offers these brief statements of Public Counsel's positions on the issues.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

By: **/s/ Marc D. Poston**
Marc D. Poston (#45722)
Deputy Public Counsel
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5558
(573) 751-5562 FAX
marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 22nd day of October 2009:

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Shemwell Lera
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Lera.Shemwell@psc.mo.gov

Finnegan D Jeremiah
Central Missouri State University (CMSU)
3100 Broadway, Suite 1209
Kansas City, MO 64111
jfinnegan@fcplaw.com

Young Mary Ann
Constellation NewEnergy-Gas Division, LLC
2031 Tower Drive
P.O. Box 104595
Jefferson City, MO 65110-4595
MYoung0654@aol.com

Steinmeier D William
Constellation NewEnergy-Gas Division, LLC
2031 Tower Drive
P.O. Box 104595
Jefferson City, MO 65110-4595
wds@wdspc.com

Woodsmall David
Midwest Gas Users Association
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65101
dwoodsmall@fcplaw.com

Conrad Stuart
Midwest Gas Users Association
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Callier B Sarah
Missouri Department of Natural Resources
P.O. Box 899
Jefferson City, MO 65102
sarah.callier@ago.mo.gov

Swearengen C James
Missouri Gas Energy
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
LRackers@brydonlaw.com

Hatfield W Charles
Oneok Energy Marketing Company
230 W. McCarty Street
Jefferson City, MO 65101-1553
chatfield@stinson.com

Finnegan D Jeremiah
University of Missouri-Kansas City (UMKC)
3100 Broadway, Suite 1209
Kansas City, MO 64111
jfinnegan@fcplaw.com

Woods A Shelley
Missouri Department of Natural Resources
P.O. Box 899
Jefferson City, MO 65102-0899
shelley.woods@ago.mo.gov

Cooper L Dean
Missouri Gas Energy
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Hale C Vivian
Oneok Energy Marketing Company
100 W. 5th
Tulsa, OK 74102
vhale@oneok.com

Finnegan D Jeremiah
Superior Bowen Asphalt Company, LLC
3100 Broadway, Suite 1209
Kansas City, MO 64111
jfinnegan@fcplaw.com

/s/ Marc Poston