

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

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

**PUBLIC COUNSEL'S REPLY
TO MISSOURI GAS ENERGY'S OBJECTION
TO PUBLIC COUNSEL'S PROPOSED NOTICE**

COMES NOW the Missouri Office of the Public Counsel and for its reply to Missouri Gas Energy's Objection to Public Counsel's Proposed Notice states:

1. Public Counsel filed a proposed customer notice on June 4, 2009, as directed by the Commission. Missouri Gas Energy (MGE) filed a response on June 11, 2009 opposing Public Counsel's proposal. Public Counsel offers this reply to MGE's Objection to Public Counsels' Customer Notice Recommendation.

2. MGE first objects to the following table appearing in Public Counsel's proposed notice:

| Customer Class of Service | Average Total Bill Increase | Range of Monthly Impacts | Average Monthly Impact |
|---------------------------|-----------------------------|--------------------------|------------------------|
| Residential | 6.8% | N/A | \$5.21 |
| Small General | 3.3% | - | \$4.06 |
| Large General | 1.3% | - | \$20.15 |
| Large Volume | 6.6% | - | \$173.04 |

MGE claims ratepayers will be confused by including the Average Total Bill Increase percentage and the Average Monthly Impact in dollars in the Notice. MGE does not explain why it believes ratepayers would be confused by including these two descriptions of MGE's proposed rate increase. Each serves a different purpose that is not served by

including only one. The Average Monthly Impact is helpful to ratepayers that are interested in seeing the dollar impact on customers with average usage. The Average Total Bill Increase percentage helps ratepayers understand the impact on their customer class, and their class impact relative to the impacts on the other customer classes. The purpose of Public Counsel's proposal is to better educate ratepayers of the proposal, which will in turn allow ratepayers to be better informed when providing comments.

3. MGE objects to the column showing the Range of Monthly Impacts because "it is unclear what this column seeks to measure and is likely to do nothing more than to confuse customers." The purpose of the range of impacts is to better educate ratepayers of MGE's proposal and the potential impacts. Relying on average dollar impact or an average percentage alone may not fully notify ratepayers with above or below average usage of the impact on their gas bills. Ratepayers with usage that varies significantly from an average usage level will not be informed of the potential impact on their bill unless the range of impacts is explained.

4. MGE objects to the 1st sentence after the 1st chart and claims it provides too much detail. The sentence states:

MGE proposes to continue the rate design for Residential customers approved by the PSC in 2006 that recovers all of MGE's distribution costs in a single fixed rate.

This sentence explains to MGE's Residential ratepayers that MGE proposes to continue the current rate design that collects all distribution costs in a single fixed charge. Public Counsel included this sentence in its proposal because it better educates Residential customers on the proposal. The Commission's 2006 order approving the Straight-Fixed Variable (SFV) rate design for MGE's Residential customers is currently on appeal

before the Western District Court of Appeals, and Public Counsel intends to oppose the SFV rate design in this case. Given the fact that ratepayers have lived under the SFV rate design since 2006, and given MGE's intention to continue this non-traditional and controversial rate design, ratepayers should be given an opportunity to comment.

5. MGE objects to the 3rd sentence after the 1st chart and claims it provides too much detail. The sentence states:

MGE also proposes to change the Small General Service (SGS) rates to recover all distribution costs in a single fixed rate, rather than the current rate design that recovers distribution costs through a two-part rate (a usage-sensitive rate and a fixed rate).

This sentence explains to MGE's Small General Service (SGS) customers that MGE proposes to eliminate their volumetric rate element for distribution costs and recover all distribution costs in a single fixed charge. Moving to a SFV rate design would be a significant restructuring of how SGS customers' rates have historically been set. Eliminating the volumetric rate element will lessen the benefits of an SGS customer's attempts to conserve energy, and moving to a fixed charge will adjust the seasonal billing differences that SGS ratepayers are accustomed to paying. The concerns SGS customers could have with these significant and undisputed changes will not be known unless SGS customers are educated on this proposal and provided with an opportunity to comment.

6. MGE objects to the 4th sentence after the 1st chart and claims it provides too much detail and provides only part of the potential impacts. The sentence refers to the SGS rate design proposal to move from a traditional rate design to the SFV and states:

This change will increase the portion of distribution costs paid by low-volume SGS customers and decrease the portion paid by high-volume SGS customers.

MGE states that “[w]hile it is true that low-volume customers would see higher than average bill increases, it is also true that average and above average customers would see lower than average bill increases and that winter time bills for those customers would, in all likelihood, decrease.” MGE’s response suggests that Public Counsel’s proposal did not describe the impact on SGS customers with both low-volume high-volume usage patterns. However, Public Counsel’s proposal specifically explains how the SFV proposal would impact low-volume and high-volume SGS ratepayers differently. It is not clear how MGE believes the above sentence is misleading. The impacts claimed by Public Counsel were affirmed by MGE’s response.

7. MGE also states that winter time bills for above-average usage customers “would, in all likelihood, decrease.” The purpose for including this statement in MGE’s response is not entirely clear. If it is meant to support MGE’s criticism that Public Counsel’s notice is “misleading,” Public Counsel asserts that recognizing the winter time decreases and not recognizing the resulting summer time bill *increases* would be very misleading.

8. MGE claims the 5th sentence after the 1st chart should be deleted because it provides too much detail. The sentence states:

MGE also proposes to move SGS customers using more than 10,000 Ccf in 2008 into the Large General Service class.

MGE does not explain how this level of detail is problematic. Public Counsel believes SGS customers should be informed of the proposal to move a large number of those SGS customers into a larger rate class that charges a higher rate. This could be a significant impact to SGS customers, and SGS customers potentially impacted should be given an opportunity to comment.

9. MGE claims the 2nd chart should be deleted because it provides too much detail. However, MGE provided no explanation as to why including this level of detail, which simply shows the proposed miscellaneous rate changes, should be rejected. Public Counsel's intention in including this chart was to fully educate and inform ratepayers of the specific rate changes proposed by MGE.

10. MGE claims its contact information should be added to the notice. MGE argues that "[a]s these are the Company's customers, MGE should also have the opportunity to receive comments from these persons." Public Counsel does not oppose adding MGE's contact information to the Notice. Public Counsel asks that the Commission direct Public Counsel and MGE to file with the Commission all ratepayer comments received directly from ratepayers.

11. MGE's last objection to Public Counsel's proposed notice is an objection to Public Counsel's proposed Customer Comment Card. Public Counsel proposed a novel approach to improve the comment process and allow customers to more easily comment on MGE's proposed rate increase. MGE's objection to the Customer Comment Card is somewhat surprising because Public Counsel is not aware of any other instance where MGE or any other utility alleged that written customer comments cannot be considered by the Commission. Allowing customers to provide written comments has been recognized in countless Commission cases as a reasonable method for allowing concerned ratepayers to offer comments. MGE's objection is an attempt to inhibit MGE's customers' ability to comment on MGE's proposal, including customers that may not otherwise provide comments to the Commission.

12. MGE claims the use of written ratepayer comments would not satisfy the standard that the Commission's decision "be supported by competent and substantial evidence on the whole record; based on lawful procedure or a fair trial; and the Commission must not act arbitrarily, capriciously, unreasonably, or abuse its discretion." MGE cites to *State ex rel. Nixon v. P.S.C.*, 274 S.W.3d 579 (Mo. App. 2009), but offers no specific explanation as to how making customer comments a part of the Commission's record would violate any portion of the standard. MGE states "[t]he use of written comments, not under oath, mailed to the Consumer Services Department would not satisfy this standard." However, it is an established principle of administrative law that administrative agencies are not required to follow technical rules of evidence. This principle extends specifically to Commission decisions under Section 386.410 RSMo. The Commission is given broad discretion in evidentiary determinations. *Deaconess Manor Assoc. v. P.S.C.*, 994 S.W.2d 602 (Mo. App. 1999).

13. Public Counsel believes written comments are admissible in evidence and are necessary to provide ratepayers with a meaningful opportunity to participate in the Commission's determination of their gas rates. Even if the written comments were later determined to be inadmissible, "the technical rules of evidence do not control in an administrative hearing, and reception of inadmissible evidence does not dictate a reversal unless there is not sufficient competent evidence to sustain the decision." *Green v. Director of Revenue*, 745 S.W.2d 818 (Mo. App. 1988). Public Counsel is not asserting that the Commission can rely on written customer comments in rendering a decision that is not otherwise supported by competent and substantial evidence.

14. A customer's ability to send written comments in lieu of attending a local public hearing is an essential part of the Commission's ratemaking proceedings. In a recent rate case, a Commission regulatory law judge stated: "Again whether received live tonight, in writing or through the Commission's website all testimony will be part of the official case file and provided to the commissioners and given equal consideration." Case No ER-2007-0004, Transcript volume 3, page 5.

15. The fact that MGE did not oppose the use of written comments until Public Counsel offered a proposal that could increase the number of comments is indicative of the true purpose of MGE's objections. MGE simply wants to silence its customers from being heard by the Commission. This purpose and MGE's objections should be sharply rejected by the Commission.

16. Public Counsel believes its proposed Customer Notice and Customer Comment Card are in the public interest and will provide customers and the Commission with essential information. Customers will receive a notice that better explains MGE's request, and the Commission will hopefully receive more comments from ratepayers to help the Commission render its decision.

17. Public Counsel has discussed its proposed notice with counsel for MGE, and will attempt to work with MGE to develop a customer notice that all parties can agree upon. Public Counsel will attempt to reach a compromise proposal to submit to the Commission as soon as possible. In the alternative, Public Counsel urges the Commission to adopt Public Counsel's proposed notice.

WHEREFORE, the Office of the Public Counsel respectfully offers this reply to MGE's objections to Public Counsel's proposed Customer Notice.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston
Marc D. Poston (#45722)
Senior 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 4th day of June 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@wdspe.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

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

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

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

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

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

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

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

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

/s/ Marc Poston
