

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

In the Matter of Proposed Amendments to)
Commission Rule 4 CSR 240-13.055.)

Case No. GX-2006-0434

**PUBLIC COUNSEL’S
APPLICATION FOR REHEARING**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and for its Application for Rehearing states:

1. On August 11, 2006 the Commission adopted a Final Order of Rulemaking amending the Cold Weather Rule (“CWR”), 4 CSR 240-13.055. Public Counsel supports the changes to the CWR that help consumers restore and retain their gas service during the cold winter months. However, Public Counsel believes the amendment also allows a utility company to recover more than the costs of the compliance with the rule. Allowing excessive cost recovery is harmful to ratepayers, and for this reason, Public Counsel requests a rehearing.

2. Public Counsel opposes to the Accounting Authority Order (“AAO”) cost recovery mechanism in Subsections (14)(F) and (14)(G) because an AAO is designed to recover extraordinary expenses,¹ not expenses incurred by a permanent rule that offers disconnection and reconnection protections for consumers. No additional cost recovery mechanism is necessary, just as no cost recovery mechanism is necessary in the current version of the CWR that restricts the company’s practices during the winter heating season. The proposed amendment simply adds to these existing protections that do not require an AAO, and will become the usual and recurring

¹ *State of Missouri, ex rel., Missouri Office of the Public Counsel v. P.S.C., et al.*, 858 S.W.2d 806 (Mo. App. W.D. 1993).

requirements under which all gas utility companies must continue to operate. The process for a utility recovering its expenses should be the same as any other rule requiring certain conduct of a utility to protect the public. The expenses associated with compliance with the rule will be the utility company's normal cost of doing business, and should be recovered through the usual rate making process.

3. In calculating the "costs" of compliance with the amendment, the amendment does not consider benefits that may be realized by compliance with the amendment. If a customer takes advantage of the rule by reconnecting, stays on the system and continues to make payments, there would be an additional increase in sales and therefore revenues, and a decrease to the company's bad debt expense. The sole purpose of the rule amendment is to help consumers stay on the system through the winter and throughout the terms of their payment plans for any arrearages. Without the rule, a customer may remain off the system and less likely to pay the company for any existing arrearages. If the rule performs as *intended* by the Commission, there will be no costs. The rule amendment does not consider these benefits in the cost calculation, and violates the "all relevant factors" requirement as upheld by the Missouri Supreme Court in *State ex rel. Utility Consumers Council of Missouri v. PSC*, 585 S.W.2d 41 (Mo. banc 1979). The Commission must consider all relevant factors to ensure that the ultimate decision of the Commission is just and reasonable.

4. As an example of how a gas company could recover in excess of the costs of compliance is as follows, assume a customer has been previously disconnected with \$500 in arrearages. Under the rule amendment the customer reconnects with a \$250 payment, rather than the \$400 payment that would have been required under Section (10). Through a payment agreement, the customer pays off \$200 in arrearages but becomes delinquent and is disconnected

still owing \$50 to the company. Under the rule amendment, the utility would be permitted to claim as costs of compliance any additional arrearages from the date of reconnection, plus the difference between \$400 (80% of \$500) and \$250 (50% of \$500). Under this example the company would recover \$450 from the consumer, \$150 as a cost of compliance, and \$50 recovered through the utility company's bad debt expense. The result will allow the company to recover \$650 for a \$500 gas bill.

5. Subsection (14)(G)3. is unreasonable in that it will require consumers to bear the risk of Commission inaction by deeming the amount requested to be "reasonably incurred" if the Commission does not act within 180 days. This addition was not included in the published rulemaking proposal, and would place an unnecessary burden on consumers. The utility should bear the burden of proving the associated costs, and Commission inaction should indicate that the gas utility has failed to meet its burden rather than an assumption that the costs are accurate. This addition to the published rulemaking was not supported by comments by any party in the rulemaking comment process.

6. Subsection (14)(G)3 together with Subsection (14)(F)3 would allow a utility to accumulate interest on net costs indefinitely. This could create significant opportunities to game the financial statements for both public and regulatory purposes. As example, a utility would not file a rate case during a period of earnings in excess of a reasonable return on equity while at the same time be allowed to defer costs under Subsection (14)(G)3 of this rule for subsequent collection from future ratepayers.

7. For these reasons, the Final Order of Rulemaking is unlawful and unreasonable, and rehearing should be granted. Section 386.500 RSMo 2000 authorizes the Public Counsel to apply for a rehearing with respect to any order or decision of the Commission.

WHEREFORE, the Office of the Public Counsel request that the Commission grant this Application for Rehearing and enter a new order consistent with this Application.

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 21st day of August 2006:

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

/s/ Marc Poston
