

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

In the Matter of Missouri Gas Energy's )  
Tariffs Increasing Rates for Gas Service )  
Provided to Customers in the Company's )  
Missouri Service Area. )

Case No. GR-2006-0422

**POSITION STATEMENT OF THE  
OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Position Statement of the Office of the Public Counsel states:

On July 14, 2006, the Commission issued its *Order Regarding Procedural Schedule, Test Year and True-Up Hearing* and ordered each party to file a statement of its position on each disputed issue. The *Order* requires the position statements to be "simple and concise," to follow the issues list filed by the parties, and that the position statements "shall not contain argument about why the party believes its position is the correct one." Following is a concise summary of Public Counsel's positions.

**I. COST OF CAPITAL**

**a. Capital Structure and Costs of Capital Other than Common Equity**

1. What is the appropriate capital structure (i.e. the relative proportions of long-term debt, short-term debt, preferred equity and common equity) to use in calculating MGE's cost of service?
2. What cost of long-term debt, short-term debt and preferred stock should be applied to the capital structure?

**b. Return on Equity**

1. What is the appropriate return on equity to use in calculating MGE's cost of service?

Public Counsel takes no position on cost of capital issues unless the Commission adopts either a decoupling or a weather normalization adjustment rate design. The prefiled testimony of Public Counsel's witness Mr. Russell Trippensee explains Public Counsel's position that reductions to return on equity should be considered if the Commission adopts a rate design that significantly reduces risk for MGE.

## **II. INCOME STATEMENT – REVENUES**

### **a. Weather Normalization**

- 1. What is the appropriate measure of normal weather to be used in calculating: 1) MGE's revenue requirement; and 2) the billing determinates to be used in establishing MGE's volumetric rate elements?**

At this time Public Counsel takes no position on this issue.

## **III. INCOME STATEMENT – EXPENSES**

### **a. Property Tax Refunds**

- 1. What is the proper treatment of \$5,554,068 in property tax refunds received by MGE during the test year?**

At this time Public Counsel takes no position on this issue.

### **b. Unrecovered Cost of Service Amortization**

- 1. Should MGE recover \$15.6 million in rates amortized over five years for alleged revenue loss due to lower customer gas use for the period January through June, 2006?**

No. This request is contrary to defined legal principles regarding retroactive ratemaking and revenue neutrality established by the Missouri Supreme Court and the Missouri Court of Appeals. Public Counsel's witness Mr. Ted Robertson submitted prefiled testimony opposing this request.

c. **Rate Case Expense**

1. **What is the appropriate amount and treatment of rate case expense, including amortization of prior rate case expense, in this case?**

Public Counsel concurs with the testimony of Staff's witness Ms. Paula Mapeka's conclusions that rate case expenses should be included for the current case only, and rate case expenses from MGE's last rate case should be disallowed.

d. **Depreciation Expense**

1. **What are the appropriate average service lives and net salvage values associated with MGE's plant to set the depreciation rates to be used in calculating MGE's cost of service?**

At this time Public Counsel takes no position on this issue.

e. **Low Income Weatherization / Natural Gas Conservation**

1. **What is the appropriate level of low income weatherization funding to be used in calculating MGE's cost of service and how should such funding be allocated among the geographic regions of MGE's service territory?**

The prefiled testimony of Public Counsel's witness Ms. Barbara Meisenheimer supports MGE's proposal to increase funding for low-income weatherization by \$100,000, to be allocated evenly among the geographic regions of MGE's service territory.

2. **Should funding for natural gas conservation programs be included in MGE's cost of service?**

No. For the reasons identified in the prefiled testimony of Public Counsel's witness Ms. Barbara Meisenheimer, Public Counsel does not support the conservation programs as proposed.

f. **Environmental Response Fund**

1. **Should the environmental response fund proposed by MGE be adopted and what, if any, level of environmental costs should be used in calculating MGE's cost of service?**

Public Counsel opposes MGE's proposal to force future ratepayers to be potentially liable for funding the cleanup costs for past hazardous substance releases at numerous Superfund sites. Public Counsel's witness Mr. Ted Robertson identifies several facts that support an order rejecting MGE's environmental response fund proposal, including: 1) MGE and Western Resources, Inc. (WRI) have already accepted liability for the remediation costs through an Environmental Liability Agreement; 2) The sites are not used and useful in providing service to current customers; 3) Remediation costs are not incurred because of the gas service MGE provides to current customers; 4) Shareholders are already compensated for site investigation expenditures through the risk premium inherent in 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's land or investment; and 6) Automatic recovery from MGE customers may reduce MGE's incentive to seek partial or complete recovery of the costs from other potentially liable parties.

**g. Infinium Software Amortization**

**1. Should the unrecovered cost associated with MGE's Infinium software be included in rates through an amortization and, if so, over what period should this cost be amortized?**

No. Public Counsel's witness Mr. Ted Robertson testified that the Commission should disallow the entire unamortized balance for the recently replaced Infinium Software. By replacing the Infinium Software with new software, current and future ratepayers will not receive any benefit and the concept of basing rates on "used and useful" property would be violated. *State ex rel. Union Electric v. P.S.C.*, 765 S.W.2d 618 (Mo. App. 1988). In December 2004, a date outside of the test year in this case, MGE retired the Infinium software by reducing accumulated depreciation \$4.5 million and by booking a \$2.3 million loss on disposition of the

property, which combined equal the total plant cost associated with the Infinium software. The Infinium software functions have been replaced and MGE's proposal would require ratepayers to pay twice for the same service.

**h. Emergency Cold Weather Rule AAO Recovery Mechanism**

**1. What is the proper rate treatment for costs deferred under the Emergency Cold Weather Rule AAO Recovery Mechanism?**

The ECWR permits a utility to recover the costs of complying with the ECWR, but Section (F)(c) prohibits recovery of costs "that would have been incurred in the absence of this emergency rule." The \$901,331 claimed to be a cost of the ECWR represents "the difference between the amount that the Company could have collected from these customers under the old cold weather rule and the amount that they actually collected under the ECWR."<sup>1</sup> To simply include the difference between the normal fee to reconnect (80%) and the ECWR fee (50%) violates subsection (c) of the ECWR by including costs MGE would have otherwise incurred, and accordingly, Public Counsel believes those amounts should not be allowed as costs of the ECWR.

**IV. CCOS, RATE DESIGN AND MISCELLANEOUS TARIFF LANGUAGE**

The parties resolved all Class Cost of Service (CCOS) issues and filed a Partial Non-Uniform Stipulation and Agreement on December 8, 2006. That agreement provides that any increase in revenue shall be spread among all customer classes as an equal percentage of the normalized present non-gas revenues of each customer class without any interclass revenue shifts. Rate design and the issue of seasonal disconnects remain unsettled.

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<sup>1</sup> Harrison Direct, p. 17. This is consistent with MGE witness Mr. Noack's calculation on Schedule H-26 attached to his Rebuttal Testimony.

**a. What is the appropriate rate design for the Residential Class?**

There are essentially three residential rate design proposals before the Commission; 1) the current traditional rate design; 2) a decoupling rate design; and 3) a rate design that increases rates when usage decreases. The prefiled testimony of Public Counsel witness Ms. Barbara Meisenheimer explains why the Commission should continue the existing traditional rate design, which was adopted just two years ago by the Commission and which collects the residential revenue requirement through a 55% fixed rate element and a 45% volumetric rate element. Ms. Meisenheimer testifies that the decoupling rate design proposal (labeled a “delivery charge” by Staff and a “straight-fixed variable” (SFV) rate design by MGE) should be rejected based on the following facts:

- It would shift substantial costs to low usage customers.
- It will lessen customer incentives to conserve their usage.
- It will lessen customer incentives to practice energy efficiency.
- The Commission rejected it two years ago as contrary to good public policy.
- The rate of return is not reduced to reflect the apparent reduction in investor risk.
- It reduces MGE’s incentives to operate efficiently and minimize costs.
- It contradicts ratepayer expectations to have some control over their bill.
- It ensures revenue neutrality for MGE and guarantees a rate of return.

MGE’s second choice is its Weather Normalization Adjustment (WNA) proposal. The proposed WNA rate design would ensure revenue neutrality by increasing rates when usage declines due to warmer than normal weather or due to consumer conservation and efficiency efforts. Ms. Meisenheimer testified that the WNA rate design would diminish a customer’s ability to benefit from conservation and efficiency efforts, and would erase benefits ratepayers

now see during warmer than normal weather. Customers would likely oppose a rate design that increases in warmer than normal weather.

To the extent the Commission may wish to allow weather normalization adjustments, requests for such adjustments before Senate Bill 179 rules are adopted are premature. Ms. Meisenheimer also testified that SB 179 contains certain protection provisions, such as the provision for an annual true-up that were not proposed by MGE in this case.

**b. What is the appropriate rate design for the Small General Service Class?**

The Staff proposes equal percent to the Small General Service Class rate elements. Public Counsel supports this proposal.

**c. What is the appropriate rate design for the Large Volume Service Class?**

At this time Public Counsel takes no position on this issue.

**d. What is the appropriate rate design for the Large General Service Class?**

At this time Public Counsel takes no position on this issue.

**e. Seasonal disconnects**

**1. Should the seasonal disconnect tariff language proposed by MGE (on Sheet No. R-31) be approved?**

No. Public Counsel's witness Ms. Barbara Meisenheimer testified that the Commission should reject the tariff language proposals that would charge customers for services they did not receive. Public Counsel does not believe a customer should be penalized if circumstances dictate that they forego service.

**V. MISCELLANEOUS ISSUES**

**a. PGA Tariff Language**

**1. Should the Commission order Staff's proposed PGA language to be put in MGE's tariffs?**

At this time Public Counsel takes no position on this issue.

**b. Kansas Property Tax AAO**

**1. Should the Kansas Property Tax AAO be continued past the expiration date ordered by the Commission in Case No. GU-2005-0095?**

No. Public Counsel's witness Mr. Ted Robertson testified that the AAO is inappropriate because the costs to be deferred are not known and measurable. In the event MGE later becomes responsible for the Kansas property tax, the appropriate remedy would be for MGE to seek emergency relief for the actual expenditures incurred.

WHEREFORE, Public Counsel offers the above position statements on the issues identified by the parties.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 18<sup>th</sup> day of December 2006:

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