

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²
AUG 0 2 2004

Missouri Public
Service Commission

In the Matter of Missouri Gas Energy's)
Tariff Sheets Designed to Increase Rates) Case No. GR-2004-0209
for Gas Service in the Company's Missouri) Tariff No. YG -2004-0624
Service Area)
)

BRIEF OF INTERVENOR CITY OF JOPLIN

COMES NOW, the City of Joplin, and pursuant to this Commission's Scheduling Order and Chapter 386, RSMo, and for its Brief in the above captioned matter states as follows:

There are a number of issues before this Commission in the above-captioned matter for which the City of Joplin has adopted the positions of other parties, in particular positions of the Staff of the Public Service Commission and the Office of Public Counsel. Intervenor City of Joplin adopts those Party's Briefs on the issues referenced in the following:

The City of Joplin adopts the position of the Staff of Public Service Commission with respect to revenue issues and expense issues

The City of Joplin adopts the position of the Office of Public Counsel with respect to rate of return, class costs of service/rate design and the excessive rate case expense.

The City of Joplin takes no position on the remaining issues, except low income proposals which are more fully addressed below.

Low Income Proposals

The City of Joplin has joined the Office of Public Counsel and the Staff of Public Service Commission in entering into a Non-Unanimous Stipulation and Agreement regarding the low income programs. The City of Joplin urges the Public Service Commission to adopt the Non-Unanimous Stipulation and Agreement as the policy for low income matters in the above captioned case and

order Missouri Gas Energy to continue such programs as noted in the Non-Unanimous Stipulation and Agreement.

Missouri Gas Energy corporation (MGE) is opposing the low income proposal contained in the Non-Unanimous Stipulation and Agreement and has, at least inferentially, asserted that the Commission has no authority to enter orders compelling low income programs in this rate case or any other case. MGE's position regarding the authority of this Commission, is contradictory to the provisions of Chapter 386. MGE's position regarding the proposed low income programs fails to address the benefits to consumers in Missouri and the status of the existing low income program currently administered by MGE. The Non-Unanimous Stipulation proposals would benefit all Missourians within the MGE service area and thus should be adopted by this commission.

Authority Regarding Low Income Proposal

The Commission's powers are generally found in Chapter 386, RSMo, and Courts consistently held that such power is limited by the statutes and to such powers expressly noted or implicitly required by the operating statutes. *CEG Inner-city Beverage Company, Inc. v. Kansas City Power and Light*, 889 S.W.2d 875 (Mo App. W.D. 1994). A review of Chapter 386 clearly demonstrates that the Commission does have the authority to implement a low income policy within MGE's service territory.

Section 386.310 generally provides that the Public Service Commission shall have the power to regulate utilities related to the safety and health of the public. Specifically this provision states:

The Commission should have the power, after a hearing had upon its own Motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every person, corporation, municipal gas system and public utility to maintain and operate its' line, plant, system, equipment, apparatus, and premises in such a

manner as to **promote and safeguard the health and safety of its employees, customers, and the public...**

Section 386.310.1, RSMo, 2000 (emphasis supplied). Section 386.310 provides the authority for the Commission to “promote and safeguard” the health and safety of MGE’s low income consumers.

Benefits of Low Income Proposal

By implementing and continuing low income programs, the Commission can promote and safeguard the health and safety by allowing low income consumers to maintain gas service for heating during the cold winter months. In the absence of such low income programs many individuals and families would not have the ability to maintain such heat which would ultimately jeopardize their health and safety.¹

The low income program in Joplin is crucial to protecting the citizens and consumers in the Joplin area. Furthermore, the proposal, contained in the non-unanimous stipulation, continues the program initially started in the last MGE period.² This program was designed as a test, is not complete, and the results are not yet available, as admitted by the testimony of Michael Noack at the

¹ The Commission did hold a hearing fully addressing these low income issues and testimony was fully developed on both sides of those issues. Any assertion by MGE that has not had the full and fair opportunity to review these issues under the procedures set forth in Chapter 386 cannot be made in good faith.

² The assertion by MGE that low income program has no support under the statutes, is incongruent with MGE’s current actions. There is a low income project, similar to the proposed system in the non-unanimous stipulation, that was imposed in the last rate case. In fact, MGE supported the low income program which was ultimately adopted by this commission. For MGE to argue now that there is no underpinning for such a program would force MGE to argue that its previous actions were null and void and without statutory authority. If that was the case, then MGE has serious questions about its credibility before this Commission if it did not present those arguments to the Commission during MGE’s last rate case.

hearing.

Moreover, due to the structure of the Non-Unanimous Stipulation and Agreement, the administrative costs of the low income program can be removed from MGE and adopted by the Joplin Area Community Action Agency. (Non-Unanimous Stipulation and Agreement, page 3-4). Even the witness for MGE, Michael Noack, admitted that if the administrative costs were borne by a local agency, there would be little if any financial impact upon MGE.

For MGE to allege that the low income proposals are costing MGE too much, indicates that they are not addressing the proposal contained in the Non-Unanimous Stipulation and Agreement. That document alleviates all of MGE's concerns and sets up a framework to assist low-income consumers to maintain heat during the winter. Ultimately the proposal allows more data to be collected to evaluate the best low-income proposals, while promoting and safeguarding the health and safety of MGE's low-income consumers, including those in the Joplin service area.

For these reasons, the Non-Unanimous Stipulation and Agreement filed by Staff of the Public Service Commission, Office of Public Counsel and the City of Joplin is authorized by Chapter 386 and promotes and safeguards the health and safety of MGE's customers and the public and thus should be adopted by this Commission.

WHEREFORE the City of Joplin urges this Commission to adopt the Non-Unanimous Stipulation and Agreement filed by Staff of the Public Service Commission, Office of Public Counsel and the City of Joplin and order that low income program be implemented by MGE during the period that the new tariffs are effective.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

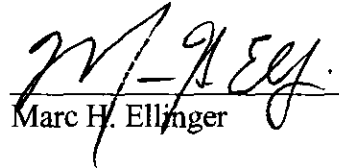
By:



Marc H. Ellinger, #40828
308 East High Street, Suite 301
Jefferson City, MO 65101
Telephone No.: (573) 634-2500
Facsimile No.: (573) 634-3358
Attorney for Intervenor City of Joplin

CERTIFICATE OF SERVICE

Copies of the foregoing Brief of Intervenor City of Joplin's was sent U.S. Mail, postage prepaid, to Mr. Cliff Snodgrass, Attorney for the Staff of the Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102 Ruth O'Neill of Office of the Public Counsel, Jan Bond of Diekemper, Shinnors, Turcotte & Larrew, P.C., Lisa C. Langeneckert of Blackwell, Sanders, Peeper & Martin, L.L.P., Robert Johnson of Blackwell, Sanders, Peeper & Martin, L.L.P., Mark W. Comley, City Attorney of Newman Comley & Ruth, P.C., Charles Brent Stewart of Stewart & Keevil, L.L.C., Jeffrey A. Keevil of Stewart & Keevil, L.L.C., James Fischer of Fischer & Dority, P.C., Larry Dority of Fischer & Dority, P.C., W.R. England, III of Brydon, Swearngen & England, P.C., Dean L. Cooper of Brydon, Swearngen & England, P.C., Stuart Conrad of Finnegan, Conrad & Peterson, L.C., Jeremiah Finnegan of Finnegan, Conrad, & Peterson, L.C., Leland Curtis of Curtis, Oetting, Heinz and Garrett, P.C., Karl Zobrist of Blackwell, Sanders, Peeper & Martin, L.L.P., Diana Vuylsteke of Bryan Cave, L.L.P., and Cliff Snodgrass Missouri Public Service Commission Staff, on this 2nd day of August, 2004.



Marc H. Ellinger