

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant)	
v.)	Case No. GC-2011-0100
)	
Missouri Gas Energy, a Division of Southern Union Company,)	
)	
Respondent.)	

**PUBLIC COUNSEL’S RESPONSE
AND MOTION TO FILE OUT OF TIME**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Response to Southern Union Company d/b/a Missouri Gas Energy’s (MGE) Motion to Reject Public Counsel’s Suggestions in Support of the Staff’s Motion for Summary Determination, and Motion to File Out of Time, states:

1. On June 2, 2011, OPC filed its *Public Counsel’s Suggestions in Support of the Staff’s Motion for Summary Determination* (“OPC’s Suggestions”) pursuant to §386.710 RSMo, which authorizes OPC to represent and protect the interests of the public in any proceeding before the Commission.
2. On June 6, 2011, MGE filed its *Motion to Reject Suggestions of Public Counsel in Support of Staff’s Motion for Summary Determination* (“Motion to Reject”).
3. As explained in paragraphs 3 and 4 of OPC’s Suggestions, OPC’s Suggestions respond to, and were filed in support of, the relief sought in the May 18, 2011 *Staff’s Suggestions in Opposition to MGE’s Motion for Summary Determination*

and Staff's Reply to MGE's Motion for Summary Determination ("Staff's Suggestions"). A ten (10) day response to the Staff's Suggestions was due May 31, 2011, two (2) days before OPC made its filing on June 2, 2011. OPC intended to file its response within ten (10) days of the Staff's Suggestions; however, due to a clerical error, counsel mistakenly believed a response was due June 2, 2011 rather than May 31, 2011.

4. In paragraph 12 of OPC's Suggestions, OPC recognizes that it could appear that OPC's Suggestions respond to the Staff's *Motion for Summary Determination*. This is due to the fact that the Staff's *Motion for Summary Determination* was the subject of the Staff's Suggestions to which OPC responded.¹ For this reason, paragraph 12 of OPC's Suggestions requests a waiver of the ten (10) day rule for responsive pleadings. However, such a waiver is unnecessary if the Commission recognizes that OPC's Suggestions respond to the Staff's Suggestions. Accordingly, OPC requests that the Commission allow OPC to file OPC's Suggestions two days after the May 31, 2011 due date.

5. MGE's Motion to Reject makes the baseless accusation that OPC's "apparent objective" was an effort to "get in the last word". No rule or Commission order prevented MGE from filing a substantive response to OPC's Suggestions. OPC did not expect that OPC's Suggestions would be the "last word" on summary determination since OPC expected MGE to file a responsive pleading.

6. MGE alleges that it would be prejudiced if OPC's motion is not rejected, but provides no explanation as to how or why it would be prejudiced other than to state

¹ OPC also recognizes that the title of OPC's Suggestions should have reflected that OPC was responding to the Staff's Suggestions, rather than to the motion that the Staff's Suggestions support.

that OPC's filing came "long after" MGE "was required to file its rebuttal arguments." MGE cannot be prejudiced by its own decision not to respond to OPC's Suggestions.

7. Good cause exists for allowing OPC to file OPC's Suggestions two (2) days out of time because: 1) the late filing was due to an inadvertent error; 2) MGE would not be prejudiced; and 3) MGE had an opportunity to respond to OPC's Suggestions.

WHEREFORE, the Office of the Public Counsel respectfully offers this response and requests a Commission order that: 1) denies MGE's Motion to Reject, and 2) grants OPC's motion to late file its response to the Staff's Suggestions.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 15th day of June 2011:

/s/ Marc Poston