

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

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 MGE
RESPONSE REGARDING CUSTOMER COMMENTS**

COMES NOW the Office of the Public Counsel ("OPC") and for its reply to Missouri Gas Energy's ("MGE") response regarding the customer comments states:

1. This comment card dispute began with OPC's motion requesting that the Commission take official notice of the comments that were requested from customers and filed with the Commission. MGE filed written objections to OPC's motion. On November 11, 2009, OPC replied to MGE's objections and explained that the Commission could grant OPC's motion and take official notice of the comments as:

- Position statements of MGE's customers under 4 CSR 240-2.040(5);
- Evidence of official records of the Commission under § 536.070(6) RSMo; and/or
- Evidence of a survey under § 536.070(11) RSMo.

2. On November 12, 2009 MGE responded and objected to the Commission taking official notice of the comment cards as a survey and argued that the requirements for admission of a survey as evidence have not been met. The relevant statute, § 536.070(11) RSMo, states:

(11) The results of statistical examinations or studies, or of audits, compilations of figures, or surveys, involving interviews with many persons, or examination of many records, or of long or complicated accounts, or of a large number of figures, or involving the ascertainment of many related facts,

shall be admissible as evidence of such results, if it shall appear that such examination, study, audit, compilation of figures, or survey was made by or under the supervision of a witness, who is present at the hearing, who testifies to the accuracy of such results, and who is subject to cross-examination, and if it shall further appear by evidence adduced that the witness making or under whose supervision such examination, study, audit, compilation of figures, or survey was made was basically qualified to make it. All the circumstances relating to the making of such an examination, study, audit, compilation of figures or survey, including the nature and extent of the qualifications of the maker, may be shown to affect the weight of such evidence but such showing shall not affect its admissibility.

This allows the admission of the results of studies, audits and surveys involving interviews with many persons, or examination of many records, or involving the ascertainment of many related facts, if it appears the study, audit or survey was made by or under the supervision of a witness who; 1) Is present at the hearing; 2) Testifies to the accuracy of such results; 3) Is subject to cross-examination; and 4) Is qualified to make the survey, study or audit.

3. MGE argues that Ms. Fred's role in collecting and reviewing the results of the survey does not satisfy the survey requirements. MGE's arguments are not persuasive. Ms. Fred is the Commission's consumer services manager and routinely receives customer comments by telephone, e-mail, fax, or in written form. (Tr. 773, 779). Ms. Fred testified that customer comments are a way to allow ratepayers to "register a simple statement" with the Commission regarding customer dissatisfaction with rate design or other rate case issue. (Tr. 778). Ms. Fred explained that the department she manages received and read all of the comment cards and that Ms. Fred personally read "about 9,000" of the 12,000 comments. (Tr. 801, 815). The consumer services department reviewed the comments and sent them to the Commission's data center to be scanned and put in to EFIS. (Tr. 803-804). This testimony is more than sufficient to find

that Ms. Fred supervised the collection and processing of the survey information, and that the comments are accurate in that they were simply scanned into EFIS without edit. This satisfies the § 536.070(11) requirement that the survey be under the supervision of an individual who testifies to the accuracy of the results. Ms. Fred is qualified as consumer services manager with the responsibility over processing the comments. Lastly, there is no question that Ms. Fred was at the hearing and available for cross-examination. Accordingly, the comment cards satisfy all requirements and qualify as an admissible survey under § 536.070(11).

4. MGE argues that the comments do not qualify as official records that the Commission can lawfully take notice of under § 536.070(6) RSMo. MGE overlooks Commission rule 4 CSR 240-2.030 that defines records of the Commission to include “documents and papers ordered by the Commission.” The Commission ordered that the customer comments be sent to the Commission’s consumer service department for filing, which satisfies the definition of a Commission record under 4 CSR 240-2.030.

5. MGE claims that because MGE raised its objections in a pleading earlier this year, OPC should not be surprised by MGE’s objections. The more MGE fights to silence its customer’s voices, customers that have taken the time and effort to provide the Commission with comments on MGE’s request to increase *their* rates, OPC continues to be surprised by MGE’s blatant attempts to keep the Commission from reading the widespread customer opposition to MGE’s rate design proposal. MGE’s shameless actions continue to surprise OPC no less today than they did in June of this year.

6. MGE offers no response to OPC’s suggestion that the Commission should take official notice of the comments as statements of position from customers that have a

right to represent themselves before the Commission. 4 CSR 240-2.040(5). If MGE's only argument is that the comments should not be admitted as evidence, this suggestion offers a solution that avoids MGE's concerns that the comments be considered as factual evidence.

7. MGE's motivation in asking that the Commission ignore the comments is obviously tainted by MGE's apparent belief that the comments do not support MGE's rate design proposal. OPC simply wants the Commission to fulfill the ratepayer's reasonable expectations that their comments to the Commission were purposeful and would be considered. OPC believes the Commission would be well within its lawful authority to take official notice of the comments as: 1) position statements; 2) official records of the Commission; or 3) a survey of the Commission. Until a court of law concludes that the Commission cannot take official notice of customer comments, OPC believes the Commission would be fulfilling its lawful duty to protect the public interest by taking official notice of the comments to help the Commission better understand the various positions of MGE's customers.

8. If the Commission wishes to gather additional live testimony from MGE customers, as suggested by Chairman Clayton during the evidentiary hearing, OPC would support that effort and would be willing to contact consumers and attempt to provide the Commission with a list of consumer willing to provide additional live testimony to the Commission on the issue of MGE's rate design proposals. OPC suggests that any such hearing should be held in Kansas City.

WHEREFORE, the Office of the Public Counsel offers this reply and urges the Commission to grant OPC's motion and take official notice of the more than 12,000 customer comment cards received by the Commission.

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 20th day of November 2009:

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