

**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)
Missouri Service Area.) Case No. GR-2009-0355

**PUBLIC COUNSEL'S OBJECTION TO THE
REPLY BRIEF OF THE COMMISSION'S STAFF**

COMES NOW the Office of the Public Counsel ("OPC") and offers the following objection to the Staff's Reply Brief:

1. The Commission closed the evidentiary record in this case on December 23, 2009 at the conclusion of the evidentiary hearing. (Tr. 1172).
2. On January 5, 2010 the parties filed reply briefs.
3. The reply brief filed by the Commission's Staff references a document that is not in evidence in this case: the National Action Plan for Energy Efficiency (NAPEE). The Staff attached a select portion of the NAPEE to its reply brief.
4. OPC objects to the Staff's attempt to introduce new evidence into the record through the Staff's reply brief after the close of evidence, thus precluding OPC or any other party from having an opportunity to rebut or respond to such evidence.
5. Given a proper opportunity to introduce evidence in response to the select portion of the NAPEE chosen by the Staff, OPC would have introduced a *complete* copy of the NAPEE into the record for the Commission to consider. A complete copy of the NAPEE report referenced by the Staff would have shown that the NAPEE does not promote adoption of a straight-fixed rate design as alleged.

6. Had the Staff properly introduced this document, OPC also could have demonstrated that in 2009 the NAPEE published a supplement titled *Customer Incentives for Energy Efficiency Through Electric and Natural Gas Rate Design – A Resource for the National Action Plan for Energy Efficiency*.¹ Here the NAPEE states that “[s]hifting costs from volumetric to fixed charges, through rate designs such as straight fixed-variable, does not encourage customer energy efficiency.” The NAPEE discourages use of the SFV because of these conservation disincentives. “Such customer disincentives persist even when SFV rates are applied to individual components of the bill, such as charges for distribution service.”²

7. For these reasons OPC objects to the Staff’s Reply Brief. If the Commission considers the Staff’s NAPEE excerpt, OPC asks that the Commission consider only a complete copy of the NAPEE, including the relevant 2009 supplement.

WHEREFORE, the Office of the Public Counsel respectfully objects to the Staff’s Reply Brief as stated herein.

Respectfully submitted,

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¹ <http://www.epa.gov/cleanenergy/energy-programs/napee/resources/guides.html#codes>

² *Id.*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 11th day of January 2010:

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